SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 423

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, AN UNINCORPORATED ASSOCIATION; E. J. HABSHEY, APPELLANTS,

vs.

S. F. WINDSOR, HARRELL HAMMONDS, KNOX McRAE, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

Civil Action No. 7466

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an Unincorporated Association; E. J. HABSHEY, Plaintiffs

vs.

S. F. WINDSOR; FELIX L. PARSONS; J. T. THROWER; WILLIAM K. THAMES; MAURY A. MCWILLIAMS; and R. P. MCREE, Defendants

COMPLAINT—Filed October 7, 1953

[File endorsement omitted.]

I

1. This is a civil action for injunction, declaratory judgment and other appropriate relief to redress the deprivation under color of State law, of rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States, and by the laws of the United States providing for equal rights of citizens of the United States and of all persons within the jurisdiction of the United States. (8 U. S. C. A. 43)

2. Jurisdiction is founded upon 28 U. S. C. A. Art. 1343, 28 U. S. C. A. Art. 1331, and 28 U. S. C. A. Art. 2201

3 Although not necessary to jurisdiction of this cause, the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000.00) Dollars.

4. This action arises out of the threatened discharge of all employees of the Alabama Alcoholic Beverage Control Board (hereinafter called "Board") by defendants acting under color of a Statute of the State of Alabama; Housebill 231, known as the "Solomon Bill" which became effective by approval of the Governor of Alabama upon September 18, 1953, a copy of which is attached hereto and made Exhibit "A" (hereinafter called the "Act".) This Act requires and purports to authorize such discharge of

any employees of the Board who remain members of or [fol. 2] continue to participate in a labor union.

5. There is now existing between the parties an actual controversy justiciable in character in respect to which the plaintiffs need a declaration of their rights by this Court.

II

1. Plaintiff Government and Civic Employees Organizing Committee (hereinafter rererred to as "Union") is a labor union and an unincorporated association, having its principal office in Washington, D. C. It is an affiliate of the Congress of Industrial Organizations and is engaged in organizing and recruiting members among, and the representation of civilian employees employed by public bodies and by social agencies, public or private. The Union's purpose is to improve the conditions of employment for and the quality of service rendered by such employees.

2. The objects of the Congress of Industrial Organizations, as set forth in its Constitution are:

> "First. To bring about the effective organization of working men and women of America regardless of race, creed, color or nationality, and to unite them for common action into labor unions for their mutual aid and protection.
>
> "Second. To extend the benefits of collective bargaining and to secure for the workers means to establish peaceful relations with their employers, by forming labor unions capable of dealing with modern aggregates of industry and finance.
>
> "Third. To maintain determined adherence to obligations and responsibilities under collective bargaining and wage agreements.
>
> "Fourth. To secure legislation safeguarding the economic security and social welfare of the workers of America, to protect and extend our democratic institutions and civil rights and liberties, and thus to perpetuate the cherished traditions of our democracy."

[fol. 3] The rules governing administration of the Union and its local bodies, provide:

"Article II

* * * * * * *

"Section 2. Membership in GCEOC shall not be denied by reason of sex, race, creed, color, nationality or religious belief but shall be denied to any avowed or proven fascist, communist or person advocating the overthrow of government by force and violence.

* * * * * * *

"Article IV

Objects

"First. To unite into one organization all eligible workers and to establish as soon as economically and numerically practical an International Union of the CIO.

"Second. To increase the wages and improve the conditions of employment of our members by legislation, negotiation or other legitimate means.

"Third. To seek the maximum job security of all members and to promote the principle of advancement and promotion based on seniority and merit.

"Fourth. To secure liberal retirement plans to be fully paid for by the employer or employing governmental body.

"Fifth. To seek extension of social security, unemployment compensation, health and welfare legislation to all American workers including governmental workers and employees of non-profit institutions; to strive to liberalize and expand these benefits.

"Sixth. To cooperate with the Congress of Industrial Organizations and its affiliated International Unions and Organizing Committees to the end that all who toil shall become members of the Union of their industry for the purpose of bringing about a more secure, more abundant and happier way of life."

3. The individual plaintiff, and all members of the Union, upon admission to membership have pledged their honor faithfully to observe these Rules.

4. Plaintiff E. J. Habshey is a clerk employed by the Board in Alabama Liquor Store No. 75 at 2620 31st Avenue, North, in Birmingham, Alabama, is a citizen of the United States, resident in the Northern District of Alabama, and [fol. 4] has been employed three years with a present salary of Two hundred ten ($210.00) Dollars per month. He has no other available means of making a livelihood.

III

1. Defendant S. F. Windsor is District Store Supervisor of the Board in Birmingham, Alabama, and is a resident of Birmingham in the Northern District of Alabama.

2. Defendant Felix L. Parsons is the Store Manager of said Alabama Liquor Store, operated by the Board and is a resident of Birmingham in the Northern District of Alabama.

3. Defendant J. T. Thrower is Chairman of the Board. Defendants William K. Thames and Maury A. McWilliams are members of the Board. Defendant R. P. McRee is the Administrator of the Board. Each is a resident of Alabama.

4. Defendants Windsor and Parsons are supervisory agents of the Board charged with enforcement of the laws of Alabama governing the Board's operations.

IV

1. Plaintiff Union presently has several hundred members among employees of the Board and of the Alabama State Hospitals. Plaintiff Habshey is a member of plaintiff Union, a labor organization, and intends to remain a member of and to continue to participate in said Union. He has not, prior to passage of the Act, acquired insurance benefits or their financial benefits as a result of such membership. He has enjoyed the exercise of his rights of free speech and assembly by such membership and his conditions of employment have improved since the Union was formed. The right to attend meetings of the Union is limited to union members and their invitees, unless a public meeting

upon a special occasion is held. This individual plaintiff, by virtue of his union membership, has been and is entitled to attend and such attendance and membership have afforded him opportunities: (1) to discuss and be informed [fol. 5] upon (a) the benefits of union membership and (b) problems of common interest involving the welfare and working conditions of himself and other citizens of the United States, members of the union or of other unions, working for the State of Alabama and for private employers; (2) to discuss, inquire about and become informed upon public affairs and public figures, economic and political issues, both local and national, and candidates for State and Federal offices; (3) to discuss and become informed upon rights and privileges, and the possibility of extending and improving such rights and privileges, pertaining to himself and to other citizens and arising under Federal legislation, such as the Social Security Act, Public Housing Acts, Price Control Acts and Regulations; (4) to discuss, inquire about and become informed upon matters of Federal and State taxation, such as the form and amounts of taxation.

2. Union meetings are utilized by plaintiff union to distribute union publications and to make available to its membership publications of interest issued by other labor unions and by governmental agencies and departments.

3. Defendants have threatened to apply the Act to and thereby to discharge plaintiff Habshey and to deprive him of all rights which he now has under the State Merit System, employment rights, reemployment rights and all other rights, benefits or privileges enjoyed by him in his present public employment, because, and for the sole reason that said plaintiff intends to remain a member of and to continue to participate in said labor union.

4. Defendants have threatened to apply the Act to and thereby to discharge all other employees of the Board who are members of the Union and to deprive them of all rights which they now have under the State Merit System, employment rights, reemployment rights, and all other rights, benefits, or privileges enjoyed by them in their present public employment, because, and for the sole reason that said employees intend to remain members of and to continue to participate in said labor union.

[fol. 6] 5. The Act is void and unconstitutional upon its face, and as defendants threaten to apply it to plaintiffs. Plaintiffs' freedoms of speech inquiry and thought, and of assembly and association, and of the press, guaranteed by the Due Process Clause of the Fourteenth Amendment are abridged by it. The individual plaintiff's membership and participation in a labor union are regulated and arbitrarily forbidden by the Act. Such membership and participation can not reasonably be deemed to interfere with the public service and such regulation is not reasonably designed to protect the integrity, competency, efficiency or loyalty of that service.

6. This Act does not embody a legislative finding that membership as such in any labor union disqualifies an individual from public employment.

7. Employees of the Alabama State Docks Board, who are public employees precisely like and in a status similar to that of, this individual plaintiff, are permitted to remain members of a labor union; in fact, plaintiffs are informed, and believing such information, plaintiffs allege that these employees of the State Docks Board continue to be members of and are represented in collective bargaining with the State by labor unions known as the Railroad Brotherhoods and by other labor unions which are affiliated with the American Federation of Labor.

8. Employees of the State of Alabama who are teachers, and who work as the Supreme Court has noted "in a sensitive area in a school room" are excepted from the Act and are permitted to remain members of labor organizations. Plaintiffs are informed, and believing such information, plaintiffs allege that many such teachers continue to be, in fact, members of and are represented by affiliates of the American Federation of Labor.

9. The Act is patently arbitrary and discriminatory and violates the privileges and immunities and equal protection clauses of the Fourteenth Amendment. This Act discriminates against certain classes of public employees and, [fol. 7] as class legislation, singles out labor unions from all other types of associations and organizations, lawful and unlawful.

VI

1. Unless immediate injunctive relief is granted, the Union will be deprived of its rights under the Constitution and laws of the United States as set out above, and will lose several hundred members and the monthly dues therefrom in amount of Two ($2.00) Dollars per month, and will be deprived of the right of soliciting membership among several thousand unorganized State employees eligible for membership in the Union; the individual plaintiff will either be deprived of his legal and constitutional rights under the Constitution and laws of the United States as set out above, or will be required to lose and forfeit his employment and all his employment rights and Alabama Civil Service (Merit System) rights relative thereto.

2. Plaintiffs are without adequate remedy at law.

Wherefore, plaintiffs respectfully pray that the Court, declare, order and decree as follows; first as an interlocutory injunction, and after appropriate hearing, as a final injunction:

1. That the above Act is unconstitutional and void.

2. That any steps taken or to be taken by defendants, their officers and agents and any other persons acting under their control and authority to effectuate and carry out the provisions of the above Act cons-itute unlawful and unconstitutional acts against the plaintiffs and are invalid, unlawful and without effect.

3. That defendants, their employees, agents and other persons acting under their control and authority, be enjoined from taking any steps or continuing to take any steps whatsoever to effectuate and carry out said Act as said Act is intended to apply to plaintiffs herein.

[fol. 8] 4. That defendants be enjoined from applying the Act to plaintiffs.

5. That defendants be enjoined from requiring, pursuant to said Act, that the individual plaintiff withdraw from membership and participation in the Union as a condition of further public employment.

6. That defendants be enjoined from discharging or in any other way requiring forfeiture of the individual plaintiff's rights under the State Merit System, employment

rights, reemployment rights, and other rights, benefits or privileges which he enjoys as a result of his public employment, by application of said Act or because said plaintiff remains a member of or continues to participate in plaintiff Union.

7. That the Plaintiffs have such other and further relief as to the Court may seem just and proper.

Since this bill seeks an injunction, restraining the enforcement, operation and execution of the above State Statute, plaintiffs respectfully apply to this Honorable Court for the convening of a Three Judge District Court, as required and provided by 28 U. S. C. A. Art. 2281 and 28 U. S. C. A. Art. 2284, with at least five days notice of the hearing date to be given to The Honorable The Governor of Alabama, and The Honorable The Attorney General of Alabama.

Because the above Act has gone into effect and will irreparably and immediately deprive plaintiffs of their legal and constitutional rights as set out above, within thirty days after the Act's effective date and before notice can be served and a hearing held, plaintiffs respectfully pray for a temporary restraining order to prevent the irreparable damage which will occur, pending the hearing and determination by the Three Judge District Court. In [fol. 9] support of the application for a temporary restraining order, there are attached hereto affidavits marked as Exhibits "b" and "c".

(S.) Arthur J. Goldberg, 1001 Connecticut Avenue, NW, Washington 6, D. C., (S.) David E. Feller, 718 Jackson Place, NW, Washington 6, D. C., (S.) Thomas E. Harris, Counsel for Government & Civic Employees Organizing Committee, CIO, Cooper, Mitch & Black, By Jerome A. Cooper, Attorneys for Plaintiffs, 1329 Brown-Marx Bldg., Birmingham, Alabama.

[fol. 10] *Duly sworn to by James W. Battles. Jurat omitted in printing.*

[fol. 11] EXHIBIT "A" TO COMPLAINT

H. B. 231 5/15/53 RI RFD State Administration 6/19/53 R2 Calendar 8/4/53 R3 at length Yeas 58 Nays 17 by Messrs. Solomon, Wilson, Givhan, Butler, Summerlin, Malone (Houston) Engelhardt, Weathers, Faulk, Branyon

A BILL TO BE ENTITLED AN ACT

To provide that any public employee who joins or participates in a labor union or labor organization shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and all other rights, benefits, or privileges which he enjoys as a result of his public employment.

Be it enacted by the Legislature of Alabama:

Section 1. As used in this act the term "labor union or labor organization" means any organization of any kind, in which employees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and the term "public employee" means any person whose compensation is derived in whole or in part from the State, or any agency, board, bureau, commission or institution thereof.

Section 2. Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment.

Section 3. This act shall not apply to persons employed as teachers by any county or city board of education or trade schools or institutions of higher learning, nor shall it apply to those employees of the State Docks Board referred to in Title 38, Section 17, of the Code of Alabama, 1940, nor shall it apply to employees of cities or counties.

Section 4. Any public employee who prior to the passage of this act or to his public employment belonged to a labor union or labor organization and as a result thereof

has acquired insurance benefits or any other financial benefits may continue to participate in such labor union or labor organization to the extent that he shall not lose any benefits thus acquired.

Section 5. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not effect the part which remains.

Section 6. All laws or parts of laws which conflict with this act are repealed.

Section 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

[fol. 12] EXHIBIT "B" TO COMPLAINT

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S APPLICATION FOR RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION—Filed October 7, 1953

E. J. HABSHEY, first being duly sworn, deposes and states:

I am employed as a clerk in Store No. 75 in Birmingham, Alabama, operated by the Alabama Alcoholic Beverage Control Board. In this store, we sell alcoholic beverages at retail to the public. Mr. Felix L. Parsons is the Store Manager at my store. He exercises authority to recommend firing of store employees. The District Supervisor, Mr. S. F. Windsor, does have authority to fire store employees. He fired one Graham, a clerk, last week because Graham refused to transfer to another store. He fired an employee of the store named Fundenberg last July for alleged misconduct. Supervisor Windsor also hires store employees. I have been working for the Board since December 1, 1951. I signed a union card in the Government and Civic Employees Organizing Committee, CIO, in April, 1952, and paid my first dues September 1, 1952. We were not required to pay dues until the retail clerks in the stores were organized. We hold union meetings at the CIO Union Hall in Birmingham. I am sergeant-at-arms. I am a citi-

zen of the United States and a resident of Birmingham in the Northern District of Alabama at 1319 Huntsville Road. I was born in Alabama.

The Alabama Alcoholic Beverage Control Board has never recognized our union, but some improvements in working conditions have been granted by the Board for the first time after it became known that the employees had organized. I intend to remain a member of our Union and to continue to participate in it. In our Union meetings, we frequently discuss federal laws, and our rights and benefits, and the possibility of our getting benefits under such laws as Federal Social Security. On one occasion, we had a representative from the Birmingham Office of the Federal Social Security Board to speak at our union meeting and explain that law and the possibility of our being eligible for benefits under it. Also, in our union meetings we dis- [fol. 13] cuss problems of Federal and State taxation, and the rights of some workers under Federal legislation, such as the National Labor Relations Act, as amended. We also discuss and have speakers talk about State laws which apply to State employees and to the people of Alabama as a whole, such as State taxes, State laws regulating labor unions and so forth. Whenever a problem of need on the part of a union member, or a member's family arises, we discuss means of giving help and financial assistance for people who are ill or in need. I have no insurance in effect with the Union or any other financial benefits due to union membership which were acquired prior to the passage of the Solomon Bill which I think unconstitutional and unlawful because it tries to take away my right to meet and participate in a union. Supervisor Windsor, I have been told, has made inquiries at some of the stores as to what clerks are members of the Union since that Act was passed. I have spoken up about my union membership and I think I have a right to express myself about such laws and my right to be a union member in my union meetings. I was initiated into union membership in accordance with the rules which govern the Government and Civic Employees Organizing Committee, CIO. Several days ago, after the Act was passed, the Manager of our store gave us a copy of that Act to read and to initial, together with a letter about it.

I have no other means of livelihood except my job as a clerk with the Alabama Alcoholic Beverage Control Board, which I wish to retain without giving up my right to remain in and to participate in my Union.

I am giving this affidavit to be used in the application for a restraining order and injunction against the enforcement of that law.

E. J. Habshey.

Sworn to and subscribed before me this 1st day of October, 1953. Thomas N. Crawford, Jr., Notary Public.

[fol. 14] EXHIBIT "C" TO COMPLAINT

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S APPLICATION FOR RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION—Filed October 7, 1953

STATE OF ALABAMA,
Jefferson County.

My name is James W. Battles. I am a representative of the Congress of Industrial Organizations (CIO) assigned to the Government and Civic Employees Organizing Committee in Alabama. I service the Local Union of the employees of the Alabama Alcoholic Beverage Control Board in Birmingham and regularly attend their union meetings at the CIO Hall in Birmingham. The right to attend those meetings is limited to members and special guests, unless a special occasion for a public meeting occurs. In these meetings, we discuss the welfare and working conditions of employees of the Board, such as Mr. E. J. Habshey, as well as the welfare of members of other unions. People and representatives from other unions very frequently attend our meetings. Although our members cannot actively engage in a political campaign because of the Merit System of Alabama (civil service), in our meetings we do discuss the voting records of State and Federal officials and representatives. The problem of benefits under and privileges granted by the Federal Social Security Act is a live one at our meetings, particularly because of

the interest of the members and the possibility of extending those benefits and privileges to our members by amendment to the law or by other steps. I was present not too long ago when a representative of the Social Security Board, by invitation, spoke to our members. We have no formal bargaining dealings with the State of Alabama or its agencies, because they have refused to recognize or to deal with our Union, and therefore our meetings are in large part discussion groups. In those meetings, we discuss Workmen's Compensation laws, and the possibility of [fol. 15] our members getting under the Alabama Workmen's Compensation Act, Federal Unemployment Compensation, and the possibility of our members being brought under that Act, Federal price control and its relation to our members, Federal and State taxation, the right to vote in State and Federal elections, and the means of qualifying as voters. In fact, in the Union Hall, our members are given an opportunity to read posters and literature in pamphlet form put out by our union and by other organizations, and containing information about collection of votes in State and Federal elections. Publications from the U. S. Department of Labor and other agencies are made available to our members in our meetings. A little union paper which our union publishes is also made available to them at our meetings, and through it our membership receives information on many public issues of the Committee. On October 2, 1953, I spoke to Mr. R. P. McRee, Administrator of the Alabama Alcoholic Beverage Control Board, and told him that I am the union representative of many employees of the Board, such as Mr. E. J. Habshey, and asked what advice I could give our members on whether the Act known as the Solomon Bill is to be enforced against our members. He stated the Board has authorized him to say that the Act would be enforced just the same as any ABC Board regulation. Attached hereto is the written reply of Administrator McRee to a wire of inquiry from the President of the Local Union to which Mr. Habshey and employees of the Board in Birmingham belong. On October 3, 1953, I spoke to District Store Supervisor S. F. Windsor, and told him that I am the union representative of many employees of the Board's stores in Birmingham and Ala-

bama. He told me that he was required to carry out any and all orders of the Board and Administrator McRee. I know that many State employees, such as those working for [fol. 16] the Alabama State Docks Board in Mobile, Alabama, are members of labor unions known as the Railway Brotherhoods and of the American Federation of Labor. There are also many Federal employees in Alabama, such as employees of the Tennessee Valley Authority who are members of labor unions. I am also informed that many teachers of the State of Alabama are and continue to be members of labor unions.

I am giving this affidavit to be used in the United States District Court proceeding to enjoin application of the above Act which I think unlawfully and unconstitutionally deprives our union and our members of rights to meet, to associate, to speak and to read freely.

James W. Battles.

Sworn to and subscribed before me this 6th day of October, 1953. Will Ella Thomason, Notary Public.

[fol. 17] APPPENDIX TO EXHIBIT "C"

Copy

STATE OF ALABAMA

ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD
MONTGOMERY 2, ALABAMA

R. P. McRee, Administrator

Board

William K. Thames, Chairman, Montgomery, Alabama.
Maury A. McWilliams, Member, Prattville, Alabama.
J. T. Thrower, Member, Dothan, Alabama.

October 2, 1953

Mr. Neal Cockrell
915 Fifth Avenue, North
Birmingham, Alabama

Dear Sir:

This will acknowledge receipt of your telegram of September 30, which reads as follows:

> "In order that we may advise our union members employed by the Board in ABC stores here in Jefferson County please advise what enforcement steps the Board contemplates to enforce the Solomon Bill against those who intend to remain in the union your prompt reply will be most appreciated."

I have been directed by the ABC Board to inform you that the Solomon Bill will be enforced by the Board in the same manner as the ABC Act or other pertinent laws.

Yours very truly, (S.) R. P. McRee, Administrator.

TPM:mt.

[fol. 18] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

APPLICATION FOR TEMPORARY RESTRAINING ORDER—Filed October 7, 1953

Come now the plaintiffs, by their undersigned attorneys, and move and apply to the Court, upon the basis of the verified complaint and affidavits of James W. Battles and E. J. Habshey filed herein, for a temporary restraining order, without notice to the defendants, because it clearly appears from the specific facts of said complaint and affidavits that immediate and irreparable injury, loss and damage will result to plaintiffs from the unlawful acts of defendants before notice can be served and a hearing by a Three Judge Court had thereon.

The acts complained of, against which the restraining order is desired, are set forth in the verified complaint.

(S.) Arthur J. Goldberg, 1001 Connecticut Avenue, NW, Washington 6, D. C., (S.) David E. Feller, 718 Jackson Place, NW, Washington 6, D. C., (S.) Thomas E. Harris, Counsel for Government & Civic Employees Organizing Committee, CIO, Cooper, Mitch & Black, By Jerome A. Cooper, 1329 Brown-Marx Bldg., Birmingham, Alabama, Attorneys for Plaintiffs.

[fol. 19] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

MOTION FOR PRELIMINARY INJUNCTION—Filed October 7, 1953

Comē now the plaintiffs, by their undersigned attorneys, and move the Court for a preliminary injunction to restrain and prevent the defendants and those acting for and in their stead from committing and doing, and continuing

to commit and do the unlawful and unconstitutional acts against the plaintiffs which are set forth in the Complaint heretofore filed herein.

(S.) Arthur J. Goldberg, 1001 Connecticut Avenue, NW, Washington 6, D. C., (S.) David E. Feller, 718 Jackson Place, NW, Washington 6, D. C., (S.) Thomas E. Harris, Counsel for Government & Civic Employees Organizing Committee, CIO, Cooper, Mitch & Black, By Jerome A. Cooper, 1329 Brown-Marx Bldg., Birmingham, Alabama, Attorneys for Plaintiffs.

[fol. 20] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

ORDER SETTING APPLICATION FOR RESTRAINING ORDER FOR HEARING—Filed October 8, 1953

The verified complaint in this cause having been filed and the prayer for temporary restraining order therein, together with the application for temporary restraining order having been called to the attention of the Court and considered it is, pursuant to Rule 65 (b) of the Rules of Civil Procedure,

Ordered, adjudged and decreed that

1. The plaintiffs' application for temporary restraining order be and the same hereby is set down for hearing before this Court at 10:00 A. M., Thursday, October 15, 1953;

2. That the attorneys of record for plaintiffs, by registered mail, serve each defendant, the Attorney General of Alabama, and the Governor of Alabama, with five days notice of said hearing, together with a copy of the complaint.

Done the 8th day of October, 1953.

Seybourn H. Lynne, United States District Judge.

[fols. 21-22] Certificate of Service (omitted in printing).

[fol. 23] In United States District Court

Affidavit in Support of Plaintiffs' Application for Restraining Order and for a Preliminary Injunction—Filed October 15, 1953

State of Alabama,
Jefferson County.

My name is James W. Battles. I am a representative of the Congress of Industrial Organizations (CIO) assigned to the Government and Civic Employees Organizing Committee in Alabama. I service the Local Union of the employees of the Alabama Alcoholic Beverage Control Board in Birmingham and regularly attend their union meetings at the CIO Hall in Brimingham.

The Birmingham News, a newspaper published in Birmingham, Jefferson County, Alabama, on October 8, 1953, carried a report of a statement by Chairman William K. Thames of the Alabama Alcoholic Beverage Control Board. Referring to the statute known as the Solomon Bill, Chairman Thames is reported to have said: "It's the law of Alabama", he said, "and it is the board's duty to defend it. We had nothing to do with writing the law, but now that it is on the books we intend to enforce it."

I am giving this affidavit to be used in the United States District Court proceeding Civil Action Case No. 7466.

I wish also to state that many members of the above labor organization employed by the above Board have withdrawn from membership in that Union because of statements from the Board to the effect that the above statute is to be enforced.

James W. Battles.

Sworn to and subscribed before me this 15th day of October, 1953. Will Ella Thomason, Notary Public, [Seal].

Above served upon M. Roland Nachman, Jr., Esq., Atty., for defendants, Oct., 15, 1953, Jerome A. Cooper.

[fol. 24] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

MOTION TO DISMISS—Filed October 15, 1953

Come the defendants in the above styled cause, S. F. Windsor, Felix L. Parsons, J. T. Thrower, William K. Thames, Maury A. McWilliams, and R. P. McRee, by their attorneys of record, and move this Court, separately and severally, to dismiss the action brought by the verified complaint, to dismiss and deny plaintiffs' motion for preliminary injunction, to dismiss and deny plaintiffs' application for a temporary restraining order, and further to refuse to convene a district court of three judges as sought in said verified complaint. As grounds therefor, defendants assign the following, separately and severally:

I

1. That this action is in substance and effect one against the State of Alabama without its consent, over which the judicial power of the United States does not extend. (Constitution of United States, Amendment XI.)

2. That this suit is not between citizens of different states.

3. That the matter in controversy in this action does not exceed the sum or value of $3,000, exclusive of interest and costs.

4. That plaintiffs have not given the security for costs and damages required by Rule 65(c), Federal Rules of Civil Procedure, as a prerequisite to the issuance of a restraining order or preliminary injunction.

5. That plaintiff, the Government and Civic Employees Organizing Committee, CIO, being an unincorporated association and not a natural person, has no standing to invoke the jurisdiction of this Court under Title 28, U. S. C. A., [fol. 25] Section 1343(3), in an attempt to assert that this plaintiff is a "person" allegedly deprived of rights, privileges or immunities secured by the Constitution and laws of the United States within Title 8, U. S. C. A., Section 43—the law allegedly giving rise to this action.

6. That the complaint fails to state a claim upon which relief can be granted.

7. That no real, actual, justiciable case or controversy exists between the parties to this cause, and plaintiffs seek a hypothetical and academic adjudication concerning the constitutionality of an act of the Alabama Legislature, namely, Act No. 720, Acts of 1953, the so-called "Solomon Bill."

8. That it affirmatively appears from the verified complaint and supporting affidavits that the individual plaintiff, E. J. Habshey, not only has suffered no irreparable harm, but for aught that appears has not been injured or damaged in any manner, or threatened with such damage or injury, by the actions of any of the defendants in this suit.

9. That for aught that appears in the complaint and supporting affidavits, plaintiff Habshey has not been threatened with discharge from his present public employment with the Alabama Alcoholic Beverage Control Board, nor does the act of the Alabama Legislature drawn in question, the so-called "Solomon Bill," require his discharge; nor are there facts in said complaint and supporting affidavits to sustain the allegations therein that plaintiff will be discharged from his present public employment.

10. That it affirmatively appears from the verified complaint and supporting affidavits that plaintiff Habshey has been deprived of no rights which he now has under the State Merit System, including employment rights, re-employment rights, and all other rights, benefits or privileges enjoyed by him in his present public employment, and indeed, the defendants would have no legal authority under any circumstances to deprive plaintiff of any rights which he now has under the State Merit System.

11. That it affirmatively appears from the verified complaint and supporting affidavits that defendants have not threatened to discharge the plaintiff, Habshey, or to deprive him of any rights which he now has under the State Merit System, including employment rights, re-employment rights, and all other rights, benefits or privileges enjoyed by him in his present public employment, because of membership and continued participation and membership in the plaintiff labor union. That the plaintiffs in this

suit attempt nothing more than an abstract adjudication of the constitutionality of the so-called "Solomon Bill," with-
[fol. 26] out a showing of injury or damage to themselves as a result of any action taken by any of the defendants herein.

12. That neither the plaintiff union nor the plaintiff Habshey has standing to complain of injury, or threatened injuries, to other employees of the Alabama Alcoholic Beverage Control Board; but it affirmatively appears from the verified complaint and supporting affidavits, that no injury, or threat of injury, will be incurred by other employees of the Alabama Alcoholic Beverage Control Board by reason of actions of the defendants discharging such other employees or depriving them of their rights under the State Merit System, employment rights, re-employment rights, and all other rights, benefits or privileges enjoyed by them in their present public employment, because of membership in and continued membership and participation in the plaintiff union on the part of these other employees.

13. That, if for any reason plaintiff Habshey is discharged from his employment with the Alabama Alcoholic Beverage Control Board, he has administrative remedies of appeal pursuant to the Alabama Merit System Act, and particularly Title 55, Section 315, Code of Alabama 1940; but that plaintiff Habshey has not attempted to utilize these remedies thus accorded him prior to bringing this action; nor has he sought remedies available to him in the courts of Alabama. That the plaintiff union has not sought legal and administrative remedies available in Alabama.

14. That proper exercise of equitable jurisdiction by this Court dictates an abstention from a decision concerning the constitutionality of the act of the Alabama Legislature drawn in question in this case, and that this Court, actuated by a scrupulous regard for the rightful independence of State governments, should refuse to exercise equitable jurisdiction in this cause.

15. That this Court should refrain from exercising its equity powers in this case so as to avoid needless obstruction of the domestic policy of the State of Alabama.

16. That this Court, having been asked to pass upon the constitutionality of an act of the Alabama Legislature

prior to administrative action under that act, prior to administrative rules and regulations implementing that act, and prior to any interpretation of that act by the courts of the State of Alabama, should, as a matter of sound equitable discretion, decline to exercise jurisdiction in this case. [fol. 27] 17. That if for any reason the plaintiffs have suffered, or will suffer, real injury or damage as a result of actions taken or to be taken by defendants under the so-called "Solomon Bill," adequate administrative and legal remedies are available to them in the State of Alabama.

18. That this Court, having been asked to construe a recently enacted, totally undefined statute of the State of Alabama, should refrain from exercising jurisdiction in this case in the absence of a definitive interpretation of the so-called "Solomon Bill" in the Alabama courts and administrative agencies.

19. That it affirmatively appears from said verified complaint that even if the said "Solomon Bill" is construed, as plaintiffs have construed it, to require that employees of the State of Alabama refrain from becoming members of labor unions, with certain exceptions contained in the act, as a condition of continued public employment, this requirement would not violate the First and Fourteenth Amendments, or any other provisions, of the Constitution of the United States.

20. That plaintiff and other employees of the Alabama Alcoholic Beverage Control Board have no constitutionally protected right to work for the State of Alabama on their own terms, and the State of Alabama may reasonably require that its employees refrain from membership in labor unions as a condition of employment by the State of Alabama.

21. That the State of Alabama, even though requiring that most of its employees refrain from membership in labor unions, may constitutionally allow certain reasonably classified segments of its employees to becom- members of labor unions; and that persons employed as teachers by county or city boards of education or by trade schools or by institutions of higher learning, and persons employed by the State Docks Board (referred to in Title 38, Section

17, Code of Alabama 1940) come within such reasonably classified segments.

22. That plaintiff union has no constitutional right to insist that the State of Alabama not require, as a condition of employment, that its employees not become members of the plaintiff union or other labor unions.

23. It affirmatively appears from the bill of complaint, and supporting affidavits, that plaintiff, Habshey, has in no manner been denied freedom of speech, of assembly, of inquiry and thought, freedom of the press; that he has not been deprived of life, liberty or property without due process of law; that his privileges and immunities guaranteed by the United States Constitution have not been infringed; that he has not been denied equal protection of the laws; and that he has not been deprived of any rights, privileges or immunities secured by the United States Con- [fol. 28] stitution by virtue of any action of any of the defendants.

24. It affirmatively appears that the plaintiff union has not been deprived of any of its rights under the Constitution of the United States by the actions of any of the defendants.

25. That the safety of the State justifies exclusion of union members from public employment, and it affirmatively appears that the so-called "Solomon Bill" is not arbitrary or discriminatory, but a reasonable exercise of the legislative power of the State of Alabama.

26. That since no federal district court has jurisdiction over the subject matter of this cause and since the complaint itself fails to state a claim upon which relief can be granted (for the reasons assigned in grounds 1-25), it would be useless for this Court to undertake the inconvenience and expense of convening a court of three judges.

Facts relied upon in support of this motion are set out in the affidavits and documents annexed hereto and made a part hereof, marked Exhibits "A" through "F".

Wherefore, defendants move this Court to dismiss this action for lack of jurisdiction, and, without waiving objections to the jurisdiction of this Court, to dismiss this action for failure to state a complaint upon which relief can be granted. Defendants further move this Court to

dismiss the verified complaint; to dismiss and deny plaintiffs' motion for preliminary injunction; to dismiss and deny plaintiffs' application for a temporary restraining order; and to refuse to convene a district court of three judges as sought in said verified complaint.

Si Garrett, Attorney General, M. Roland Nachman, Jr., Assostant Attorney General, William H. Sanders, Assistant Attorney General, Jesse M. Williams, Montgomery, Alabama, Attorneys for Defendants.

[fol. 29] EXHIBIT "A" TO MOTION TO DISMISS

STATE OF ALABAMA,
Montgomery County.

Before me, Frances D. Walter, a Notary Public for the State of Alabama at large, personally appeared R. P. McRee, who deposed and stated:

I am R. P. McRee, Administrator of the Alabama Alcoholic Beverage Control Board with offices in Montgomery, Alabama. My duties include the administration of all of the provisions of the Alabama Alcoholic Beverage Control Act, subject to the supervision of the Alabama Alcoholic Beverage Control Board.

To date no rules or regulations have been proposed or adopted, interpreting or implementing Act No. 720, Acts of Alabama Legislature 1953 (the "Solomon Bill"), as that Act may relate to employees of the Alabama Alcoholic Beverage Control Board; nor have directives or instructions been issued to supervisors, store managers, or other employees of the Alabama Alcoholic Beverage Control Board with regard to the administration of the "Solomon Bill". The Alabama Alcoholic Beverage Control Board has adopted no specific policies concerning the "Solomon Bill" other than a general recognition of its duties to enforce all the laws of Alabama relating to the Alabama Alcoholic Beverage Control Board, including the "Solomon Bill".

As Administrator, I am empowered, authorized and directed pursuant to Regulation No. 24, adopted in 1951, to

employ all personnel needed for the operation of the Alabama Alcoholic Beverage Control Board, to increase their salaries, or to dispense with their services should the occasion arise, in accordance with the rules and regulations promulgated by the personnel board under the Alabama Merit System law.

No person below the level of the Administrator has authority to discharge or dismiss any employee of the Alabama Alcoholic Beverage Control Board, or to deprive him of any rights, benefits or privileges enjoyed by him in his public employment under the State Merit System. A supervisor for the Alabama Alcoholic Beverage Control Board may only suspend an employee pending further investigation and action by the Administrator.

[fol. 30] Any action which I may take, as Administrator, with regard to the dismissal or discharge of any employee of the Alabama Alcoholic Beverage Control Board would be subject to review by the Director of Personnel of the State of Alabama, and the State Personnel Board. I have no final authority to dismiss any employee of the Alcoholic Beverage Control Board, for any reason, or to deprive him of any rights, benefits, or privileges which he may enjoy by reason of his public employment under the Alabama Merit System.

At no time have I discharged or dismissed or threatened to discharge or dismiss or to apply the "Solomon Bill" to E. J. Habshey, a clerk employed by the Alcoholic Beverage Control Board, Alabama Liquor Store No. 75 at 2620 31st Avenue North in Birmingham, Alabama, or any other individual employee of the Alabama Alcoholic Beverage Control Board, or to deprive said Habshey, or any other such employee, of the rights, benefits and privileges enjoyed under the State Merit System by reason of membership in and continued membership and participation in any labor union.

My letter of October 2, 1953, addressed to Mr. Neal Cockrell, contained and was intended to contain nothing more than a general statement that the members of the Alabama Alcoholic Beverage Control Board stood ready to perform their duties as state officers with respect to all the laws of Alabama which might relate to those duties, including the "Solomon Bill". My statements of October 2, 1953, to Mr. James W. Battles were of the same import.

No directives or orders have been issued by any of the members of the Alabama Alcoholic Beverage Control Board or by me, to any supervisor or store manager employed by the Alabama Alcoholic Beverage Control Board with regard to the administration of the "Solomon Bill," as it may relate to the Alabama Alcoholic Beverage Control Board employees, except that the passage of the "Solomon Bill" and its contents were brought to the attention of all Alabama Alcoholic Beverage Control Board store employees. No instructions or directives to supervisors or store managers have been issued from me or from the Alabama Alcoholic Beverage Control Board directing that dismissal proceedings be instituted against any employee because of membership in any labor union, or continued membership and participation in any labor union.

Since the passage of the "Solomon Bill" I have made no inquiries or investigations concerning union membership on the part of the Alabama Alcoholic Beverage Control Board employees, including the said E. J. Habshey, nor have I directed that supervisors, store managers or other personnel of the Alabama Alcoholic Beverage Control [fol. 31] Board conduct such inquiries or investigations.

R. P. McRee.

Sworn and subscribed before me on this the 14th day of October, 1953. Frances D. Walter, Notary Public (Seal).

[fol. 32] EXHIBIT "B" TO MOTION TO DISMISS

STATE OF ALABAMA,
Montgomery County.

Personally appeared before me, Frances D. Walter, Notary Public for the State of Alabama at Large, William K. Thames, who deposed and said as follows:

I am William K. Thames, Chairman of the Alabama Alcoholic Beverage Control Board, with offices in Montgomery, Alabama. The other members of this Board are Mr. J. T. Thrower of Dothan, Alabama, and Mr. Maury McWilliams of Prat-ville, Alabama. The function of the Alabama Alcoholic Beverage Control Board is the adminis-

tration of the Alabama Alcoholic Beverage Control Act and the supervision of the Board extends to all aspects of the administration under this act. Mr. R. P. McRee is Administrator of the Alabama Alcoholic Beverage Control Board and his duties include the administration of all the provisions of this act under the supervision of the Board.

To date no rules or regulations have been proposed or adopted interpreting or implementing Act No. 720, Acts of Alabama Legislature 1953 (the "Solomon Bill"), as that act may relate to employees of the Alabama Alcoholic Beverage Control Board; nor have directives or instructions been issued to supervisors, store managers, or other employees of the Alabama Alcoholic Beverage Control Board with regard to the administration of the "Solomon Bill". The Alabama Alcoholic Beverage Control Board has adopted no specific policies concerning the "Solomon Bill" other than a general recognition of its duties to enforce all the laws of Alabama relating to the Alabama Alcoholic Beverage Control Board, including the "Solomon Bill".

The Administrator, Mr. McRee, is empowered, authorized and directed pursuant to Regulation No. 24, adopted in 1951, to employ all personnel needed for the operation of the Alabama Alcoholic Beverage Control Board, to increase their salary, or to dispense with their services should the occasion arise, in accordance with the *with the* rules and regulations promulgated by the personnel board under the Alabama Merit System law.

No person below the level of the Administrator has authority to discharge or dismiss any employee of the Alabama Alcoholic Beverage Control Board, or to deprive him of any rights, benefits or privileges enjoyed by him in his public employment under the State Merit System. A supervisor for the Alabama Alcoholic Beverage Control [fol. 33] Board may only suspend an employee pending further investigation and action by the Administrator.

Any action taken by the Administrator, with regard to the dismissal or discharge of any employee of the Alabama Alcoholic Beverage Control Board is subject to review by the Director of Personnel of the State of Alabama, and the State Personnel Board. The Administrator, and members of the Alabama Alcoholic Beverage Control Board have no

final authority to dismiss any employee of the Alcoholic Beverage Control Board, for any reason, or to deprive him of any rights, benefits, or privileges which he may enjoy by reason of his public employment under the Alabama Merit System.

At no time have I, or any member of the Alabama Alcoholic Beverage Control Board, or Mr. McRee, discharged or dismissed or threatened to discharge or dismiss or to apply the "Solomon Bill" to E. J. Habshey, a clerk employed by the Alabama Alcoholic Beverage Control Board, Alabama Liquor Store No. 75 at 2620 31st Avenue, No., in Birmingham, Alabama, or any other individual employee of the Alabama Alcoholic Beverage Control Board, or to deprive said Habshey, or any other such employee, of the rights, benefits and privileges enjoyed under the State Merit System by reason of membership in and continued membership and participation in any labor union.

A letter of October 2, 1953, from Mr. McRee, addressed to Mr. Neal Cockrell, contained and was intended to contain nothing more than a general statement that I, and the other members of the Alabama Alcoholic Beverage Control Board, stood ready to perform our duties as State officers with respect to all the laws of Alabama which might relate to those duties, including the "Solomon Bill."

No directives or orders have been issued by me or the other members of the Alabama Alcoholic Beverage Control Board or by Mr. McRee, to any supervisor or store manager employed by the Alabama Alcoholic Beverage Control Board with regard to the administration of the "Solomon Bill," as it may relate to the Alabama Alcoholic Beverage Control Board employees, except that the passage of the "Solomon Bill" and its contents were brought to the attention of all Alabama Alcoholic Beverage Control Board store employees. No instructions or directives to supervisors or store managers have been issued by me, or by the other members of the Alabama Alcoholic Beverage Control Board, or by Mr. McRee, directing that dismissal proceedings be instituted against any employee because of membership in any labor union, or continued membership and participation in any labor union.

Since the passage of the "Solomon Bill" neither I nor the other members of the Alabama Alcoholic Beverage

[fol. 34] Control Board, have made inquiries or investigations concerning union membership on the part of the Alabama Alcoholic Beverage Control Board employees, including the said E. J. Habshey, nor have I directed that supervisors, store managers or other personnel of the Alabama Alcoholic Beverage Control Board conduct such inquiries or investigations.

William K. Thames.

Sworn to and subscribed before me this the 14th day of October, 1953. Frances D. Walter, Notary Public, (Seal).

[fol. 35] EXHIBIT "C" TO MOTION TO DISMISS

STATE OF ALABAMA,
Montgomery County.

Personally appeared before me, Frances D. Walter, Notary Public for the State of Alabama at Large, S. F. Windsor, who deposed and said as follows:

I am S. F. Windsor, District Store Supervisor for the Alabama Alcoholic Beverage Control Board, charged with general supervision of all State Liquor Stores in Jefferson, Tuscaloosa, Colbert and Madison Counties.

I have no authority to discharge or dismiss any employee of the Alabama Alcoholic Beverage Control Board, or to deprive such employee of any rights, benefits or privileges enjoyed by him in his public employment under the State Merit System. As Supervisor, I may only suspend an employee pending further investigation and action by the Administrator of the Alabama Alcoholic Beverage Control Board, Mr. R. P. McRee.

I supervise the operation of the State Liquor Stores under my jurisdiction in accordance with the directives and instructions issued to me by Mr. McRee. To date I have received no directives or instructions from Mr. McRee or the Alabama Alcoholic Beverage Control Board with regard to the administration of the so-called "Solomon Bill".

At no time have I discharged either a person named Graham or a person named Fundenberg. Both men were

discharged by Mr. McRee after investigation by him. I merely recommended their suspension from employment pending such investigation by Mr. McRee. At no time since the passage of the "Solomon Bill" have I made inquiry at any State Liquor Store under my supervision as to whether or not any of the clerks or employees of these stores were members of any labor union. I did confer with Mr. James W. Battles on or about October 3, 1953. Mr. Battles inquired what I proposed to do about the so-called "Solomon Bill". I told Mr. Battles that I had no plans in that regard, and would carry out any instructions which I received from Mr. McRee and the Alabama Alcoholic Beverage Control Board. I stated further to Mr. Battles that I had not at any time received any such instructions, nor have I to this date. Mr. Battles asked further whether I had any intention of firing employees of any of the State Liquor Stores under my supervision because of union membership. I replied that I had no authority to fire any one, that this was within the province of Mr. McRee, and that I did not know what Mr. McRee proposed to do. At no [fol. 36] time have I threatened to apply the "Solomon Bill" to, or to discharge, E. J. Habshey and to deprive him of his rights, benefits and privileges under the State Merit System now enjoyed by him in his present employment because of his membership in and intention to remain a member of and to continue to participate in any labor union. I have made no such threat to any other employee of the Alabama Alcoholic Beverage Control Board.

S. F. Windsor.

Sworn to and subscribed before me this the 13th day of October, 1953. Frances D. Walter, Notary Public (Seal).

[fol. 37] EXHIBIT "D" TO MOTION TO DISMISS

STATE OF ALABAMA,
Montgomery County.

Personally appeared before me, Frances D. Walter, Notary Public for the State of Alabama at Large, Felix L. Parsons, who deposed and said as follows:

I am Felix L. Parsons, an employee of the Alabama Alcoholic Beverage Control Board and Store Manager of Alabama Liquor Store No. 75, located at 2620 31st Avenue, No., Birmingham, Alabama. Mr. E. J. Habshey is employed as a store clerk in this store. I am acting head of the operation conducted in Alabama Liquor Store No. 75. I operate under instructions from Mr. S. F. Windsor, who is District Supervisor of the Alabama Alcoholic Beverage Control Board in my district, and I operate under general instructions from Mr. R. P. McRee, Administrator of the Alabama Alcoholic Beverage Control Board.

I have no authority to discharge or dismiss any employee of the Alabama Alcoholic Beverage Control Board employed in my store or to deprive him of any rights, benefits or privileges enjoyed by him in his public employment under the State Merit System.

At no time since the passage of the "Solomon Bill" have I threatened to apply that act or to dismiss or to discharge E. J. Habshey from his present public employment in my store, or to deprive him of any of his rights, benefits and privileges which he now has under the State Merit System because of membership in any labor union or intent to continue membership and participation in any labor union. I have made no such threat to any other employees of the Alabama Alcoholic Beverage Control Board. I have at no time made any inquiry or investigation as to whether or not the clerks or any employees in my store were members of any labor union.

During the latter part of September, 1953, after the passage of the "Solomon Bill" I received two copies of this bill from Mr. McRee with instructions to circulate these copies among the employees in my store and to request that they read the bill and initial a copy of it. I complied with these instructions, but at no time did I make any

statement concerning the contents of the "Solomon Bill," or any effect which it might have upon the employees of my store. I merely handed them a copy of the act and [fol. 38] asked them to read it and initial it.

Felix L. Parsons.

Sworn to and subscribed before me on this the 13th day of October, 1953. Frances D. Walter, Notary Public (Seal).

[fol. 39] EXHIBIT "E" TO MOTION TO DISMISS

STATE OF ALABAMA,
Montgomery County.

Personally appeared before me, Frances D. Walter, Notary Public for the State of Alabama at Large, Charles W. Terry, who deposed and said as follows:

I am Charles W. Terry, Director of Personnel of the State of Alabama. I am executive head of the State Department of Personnel and charged by law with the direction and supervision of all administrative and technical activities of this department. Included among my duties are the preparation and recommendation of rules and regulations for the administration of the State Merit System Act; the formulation of employment registers and the certification of persons qualified for appointment in the State Merit System; the approval of all payrolls or other compensation for personal services within the State service; and the direction of all matters pertaining to the terms and conditions of the employment of persons by the State of Alabama within the coverage of the State Merit System.

No employee in the Classified Service of the State of Alabama may be dismissed for any reason unless his appointing authority serves a copy of the reasons for such dismissal on me, which document becomes a public record. In addition, any dismissed employee may within ten days after notice of such action of his appointing authority appeal therefrom to the State Personnel Board. The State Personnel Board may either approve the dismissal, change

the dismissal to some lesser form of discipline, or order reinstatement of the employee and certify its findings to the appointing authority who must put them into effect. On occasion the action of the State Personnel Board has been reviewed by the courts of Alabama.

To date no rules and regulations have been recommended or approved implementing and interpreting Act No. 720 of the Acts of Alabama 1953, the so-called "Solomon Bill."

No action has been taken by me nor by the State Personnel Board with regard to any employee of the Alabama Alcoholic Beverage Control Board whereby any employee of that Board has been dismissed or discharged from his employment or deprived of any of the rights, benefits and privileges accorded him by reason of his public employment in the Merit System of the State of Alabama because of membership in any labor union. Nor have I or any [fols. 40-41] member of the Board threatened any such employee with such dismissal, discharge or deprivation because of membership in any labor union.

Mr. E. J. Habshey enjoys full Merit System status as a store clerk employed by the Alabama Alcoholic Beverage Control Board and presently enjoys all the rights, benefits and privileges of any other employee of the State of Alabama under the Alabama Merit System Act.

The appointing authority of Mr. E. J. Habshey has not requested in any manner that the said Habshey be dismissed or discharged from his present public employment or deprived of any of the rights, benefits and privileges which he enjoys as a public employee of the State of Alabama subject to the Alabama Merit System Act.

Charles W. Terry.

Sworn to and subscribed before me this the 13th day of October, 1953. Frances D. Walter, Notary Public (Seal).

[fol. 42] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

ANSWER—Filed October 15, 1953

Come the defendants, and without waiving their motion to dismiss or any ground thereof, but expressly insisting thereon, neverthless for answer to the complaint say:

1. The complaint fails to state a claim against defendants upon which relief can be granted.

2. Defendants deny each and every allegation contained in paragraphs I (1) through I (5) of the complaint, except that this is a civil action.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth if the allegations contained in paragraphs II (1-3) of the complaint.

4. Defendants admit the allegations of paragraph II (4) except that defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations that plaintiff E. J. Habshey has no other available means of making a livelihood.

5. Defendants admit the allegations of paragraphs III (1-4) except that they deny that defendant J. T. Thrower is Chairman of the Board, and deny that defendants Windsor and Parsons are charged with enforcement of the laws of Alabama governing the Board's operations.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs IV (1) and (2) of the complaint.

[fol. 43] 7. Defendants deny each and every allegation contained in paragraph IV (3) of the complaint.

8. Defendants deny each and every allegation contained in paragraph IV (4) of the complaint.

9. Defendants deny each and every allegation and averment contained in paragraph IV (5) of the complaint.

10. Defendants deny each and every allegation and averment contained in paragraph IV (6) of the complaint.

11. Defendants deny the allegation and averment in paragraph IV (7) that employees of the Alabama State Dock Board are public employees like and in a status similar

to that of the individual plaintiff; defendants admit that some of such Alabama State Dock Board employees are permitted to remain members of a labor union; defendants are without knowledge or information sufficient to form a belief as to the remaining allegations and averments contained in paragraph IV (7).

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV (8).

13. Defendants deny each and every allegation, averment and legal conclusion contained in paragraph IV (9) of the complaint.

14. Defendants deny each and every allegation, averment and legal conclusion contained in paragraphs VI (six) 1 and 2 of the complaint.

15. Defendants deny that the "Solomon Bill" (Act No. 720, Acts of Alabama 1953) will irreparably and immediately deprive plaintiffs of any of their legal and constitutional rights, and deny that any irreparable damage will occur.

16. Defendants deny each and every allegation and averment contained in plaintiffs' "Motion for Preliminary Injunction."

17. Defendants deny each and every allegation and averment contained in plaintiffs' "Application for Temporary Restraining Order."

And having fully answered plaintiffs' complaint, motion for preliminary injunction, and application for temporary restraining order, defendants pray that they may be discharged with their reasonable costs incurred.

Si Garrett, Attorney General, M. Roland Nachman, Jr., Assistant Attorney General, William H. Sanders, Assistant Attorney General, Jesse M. [fol. 44] Williams, Montgomery, Alabama, Attorneys for defendants.

Certificate of Service (omitted in printing).

[fol. 45] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

ORDER DENYING PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER—Filed October 15, 1953

This cause coming on to be heard on application in behalf of plaintiffs for a temporary restraining order pending the determination of this action by a statutory court of three judges, and the court having received, in open court, the oral assurance of the defendants and of their attorneys of record that the provisions of the State statute described in and attached to the complaint would not be applied to forfeit any of the rights of the individual plaintiff, E. J. Habshey, and that the said individual plaintiff would not be discharged from his present employment by the State of Alabama because of his union membership until after the order of the three-judge court shall have been entered in this action.

It is accordingly ordered, adjudged and decreed that plaintiffs' application for a temporary restraining order be and the same is hereby denied.

Done, this the 15th day of October, 1953.

Seybourn H. Lynne, Chief Judge, United States District Court.

[fol. 46] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

REQUEST OF THE HONORABLE SEYBOURN H. LYNNE, UNITED STATES DISTRICT JUDGE, THAT TWO OTHER JUDGES BE DESIGNATED TO CONSTITUTE THE COURT REQUIRED BY LAW—Filed October 15, 1953

To the Honorable Joseph C. Hutcheson, Jr., Chief Judge, United States Court of Appeals for the Fifth Circuit:

Pursuant to the provisions of Title 28, U. S. C. A., Section 2284, notice is hereby given that in the above-styled action

the plaintiffs have presented to me an application for a permanent injunction restraining the enforcement, operation or execution of a statute of the State of Alabama upon the ground of the unconstitutionality of such statute, which is required to be heard and determined by a district court of three judges by Title 28, U. S. C. A., Section 2281.

It is respectfully requested that you designate two other judges, at least one of whom shall be a circuit judge, to constitute the court required by law.

This the 15th day of October, 1953.

Seybourn H. Lynne, Chief Judge, United States District Court.

[fols. 47-48] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

ORDER DESIGNATING THE HONORABLE RICHARD T. RIVES, UNITED STATES CIRCUIT JUDGE, AND THE HONORABLE H. H. GROOMS, UNITED STATES DISTRICT JUDGE, TO SERVE WITH THE HONORABLE SEYBOURN H. LYNNE, CHIEF JUDGE UNITED STATES DISTRICT COURT, AS MEMBERS OF, AND WITH HIM TO CONSTITUTE, THE SAID COURT TO HEAR AND DETERMINE THIS ACTION—Filed October 19, 1953

The Honorable Seybourn H. Lynn, Chief Judge, United States District Court for the Northern District of Alabama, to whom an application for injunction and other relief has been presented in the above-styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I hereby designate the Honorable Richard T. Rives, United States Circuit Judge, and the Honorable H. H. Grooms, United States District Judge for the Northern District of Alabama, to serve with Judge Lynne as members of, and with him to constitute, the said court to hear and determine the action.

Witness my hand this 17th day of October, 1953.

J. C. Hutcheson, Jr., Chief Judge, Fifth Circuit.

(Injunctions — Three Judge Courts — Designation, 28 USCA Sec. 2284.)

[fol. 49] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF W. H. KING

I, W. H. King, an employee of ABC Store No. 11, Birmingham, Alabama, was a charter member of Local 1409, GCEOC-CIO; however, I dropped out of the Union after the Solomon Bill was enacted into law because I did not wish to forfeit all rights which I have under the State Merit System.

I would still like to be a member of the Union and enjoy all the benefits which I received as a member were it not for the restrictive legislation recently enacted.

W. H. King.

STATE OF ALABAMA,
County of Jefferson.

Sworn to and subscribed before me this 23 day of October, 1953. James W. Battles, Notary Public (Seal).

My commission expires Jan. 8, 1956.

[fol. 50] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CARL DUFFIE

I, Carl Duffie, an employee of ABC Store No. 15, Birmingham, Alabama, was a charter member of Local 1409, ABC Store Employees, affiliated with the Government and Civic Employees Organizing Committee-CIO; however, I dropped out of the Union after the Solomon Bill was enacted into law because I did not wish to forfeit all rights which I have under the State Merit System.

I would still like to be a member of the Union and enjoy all the benefits which I received as a member were it not for the restrictive legislation recently enacted.

Carl Duffie.

STATE OF ALABAMA,
County of Jefferson.

Sworn to and subscribed before me this 23 day of October, 1953. James W. Battles, Notary Public (Seal).

My commission expires Jan. 8, 1956.

[fol. 51] IN UNITED STATES DISTRICT COURT

Exhibit "A-1"

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND ANSWER—Filed October 27, 1953

STATE OF ALABAMA,
County of Montgomery.

Before me, Frances D. Walter, a Notary Public for the State of Alabama at large, personally appeared R. P. McRee, who deposed and stated:

The affidavit which I executed on the 14th day of October 1953, to be used in connection with this litigation and which appears as Exhibit "A" to the defendants' Motion to Dismiss was then and is now a correct statement of the facts stated therein. I hereby adopt and repeat all of said statements as of this date just as if I were now making said affidavit.

R. P. McRee.

Sworn to and subscribed before me on this the 23rd day of October 1953. Frances D. Walter, Notary Public (Seal).

[fol. 52] IN UNITED STATES DISTRICT COURT

Exhibit "B-1"

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND ANSWER

STATE OF ALABAMA,
County of Montgomery.

Before me, Frances D. Walter, a Notary Public for the State of Alabama at large, personally appeared William K. Thames, who deposed and stated:

The affidavit which I executed on the 14th day of October 1953, to be used in connection with this litigation and which appears as Exhibit "B" to the Defendants' Motion to Dismiss was then and is now a correct statement of the facts

stated therein. I hereby adopt and repeat all of said statements as of this date just as if I were now making said affidavit.

William K. Thames.

Sworn to and subscribed before me on this the 26th day of October, 1953. Frances D. Walter, Notary Public (Seal).

[fol. 53] IN UNITED STATES DISTRICT COURT

Exhibit "C-1"

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND ANSWER

STATE OF ALABAMA,
County of Jefferson.

Before me, Gladys G. Lively, a Notary Public for the State of Alabama, personally appeared S. F. Windsor, who deposed and stated:

The affidavit which I executed on the 13th day of October 1953, to be used in connection with this litigation and which appears as Exhibit "C" to the Defendants' Motion to Dismiss was then and is now a correct statement of the facts stated therein. I hereby adopt and repeat all of said statements as of this date just as if I were now making said affidavit.

S. F. Windsor.

Sworn to and subscribed before me on this the 27th day of October 1953. Gladys G. Lively, Notary Public.

[fol. 54] IN UNITED STATES DISTRICT COURT

Exhibit "D-1"

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND ANSWER

STATE OF ALABAMA,
County of Jefferson.

Before me, Gladys S. Lively, a Notary Public for the State of Alabama, personally appeared Felix L. Parsons, who deposed and stated:

The affidavit which I executed on the 13th day of October 1953, to be used in connection with this litigation and which appears as Exhibit "D" to the Defendants' Motion to Dismiss was then and is now a correct statement of the facts stated therein. I hereby adopt and repeat all of said statements as of this date just as if I were now making said affidavit.

Felix L. Parsons.

Sworn to and subscribed before me on this the 27 day of October, 1953. Gladys G. Lively, Notary Public (Seal).

[fol. 55] IN UNITED STATES DISTRICT COURT

Exhibit "E-1"

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND ANSWER

STATE OF ALABAMA,
County of Montgomery.

Before me, Frances D. Walter, a Notary Public for the State of Alabama at large, personally appeared Charles W. Terry, who deposed and stated:

The affidavit which I executed on the 13th day of October 1953, to be used in connection with this litigation and which appears as Exhibit "E" to the Defendants' Motion to Dismiss was then and is now a correct statement of the facts stated therein. I hereby adopt and repeat all of said state-

ments as of this date just as if I were now making said affidavit.

Charles W. Terry.

Sworn to and subscribed before me on this the 26th day of October, 1953. Frances D. Walter, Notary Public (Seal).

[fol. 56] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

Civil Action No. 7466

GOVERNMENT AND CIVIV EMPLOYEES ORGANIZING COMMITTEE, CIO, an unincorporated association; E. J. HABSHEY, Plaintiffs,

vs.

S. F. WINDSOR; FELIX L. PARSONS; J. T. THROWER; WILLIAM K. THAMES; MAURY A. MCWILLIAMS; and R. P. MCREE, Defendants.

Before RIVES, Circuit Judge, LYNNE and GROOMS, District Judges.

GROOMS, District Judge.

OPINION—November 9, 1953

This action is for an injunction and declaratory judgment. Jurisdiction is invoked under 29, U. S. C. A., sections 1331, 1343 and 2201. Since the injunction sought is to restrain the enforcement, operation and execution of a statute of the State of Alabama, this court is convened pursuant to Title 28, U. S. C. A., 2284. The statute involved is House Bill 231, known as the "Solomon Bill."[1] This stat-

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[1] Be it enacted by the Legislature of Alabama:

Section 1. As used in this act the term "labor union or labor organization" means any organization of any kind, in which employees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or con-

ute became effective on September 18, 1953. By stipulation, [fol. 57] the case is submitted for final decree upon the pleadings, affidavits, and testimony taken orally.

This action is filed by the Government and Civic Employees Organizing Committee, CIO, an unincorporated association, and E. J. Habshey, a clerk employed at Alabama quor Store No. 75, Birmingham. The defendants are J. T. Thrower, who is Chairman of the Alabama Alcoholic

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ditions of work; and the term "public employee" means any person whose compensation is derived in whole or in part from the State, or any agency, board, bureau, commission or institution thereof.

Section 2. Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeiture all rights afforded him under the State Merit System, employment rights, re-employment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment.

Section 3. This act shall not apply to persons employed as teachers by any county or city board of education or trade schools or institutions of higher learning, nor shall it apply to those employees of the State Docks Board referred to in Title 38, Section 17, of the Code of Alabama, 1940, nor shall it apply to employees of cities or counties.

Section 4. Any public employee who prior to the passage of this act or to his public employment belonged to a labor union or labor organization and as a result thereof has acquired insurance benefits or any other financial benefits may continue to participate in such labor union or labor organization to the extent that he shall not lose any benefits thus acquired.

Section 5. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not effect the part which remains.

Section 6. All laws or parts of laws which conflict with this act are repealed.

Section 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Beverage Control Board, William K. Thames and Maury A. McWilliams, members of the Board, R. P. McRee, Administrator of the Board, S. P. Windsor, District Store Supervisor of the Board in Birmingham, and Felix L. Parsons, Store Manager of Store No. 75.

Habshey is a member of the plaintiff union and intends to remain a member and to continue to participate in its activities. He has not acquired any insurance or other financial benefits as a result of such membership.

Several days after the passage of the Solomon Bill, defendant Parsons gave Habshey and the other employees of Store 75 a copy of the Bill. They were also shown a letter from defendant McRee requesting that they read, "understand," and initial one copy of the Bill. This copy was to be forwarded to Montgomery and another copy retained at the store. This appears to have been a routine procedure. On October 2, 1953, the union orally and by wire requested defendant McRee to advise it what enforcement steps the Board contemplated taking to enforce the Bill. McRee replied that he was directed by the Board to inform the union "that the Solomon Bill will be enforced by the Board [fol. 58] in the same manner as the ABC Act or other pertinent laws." The following day defendant Windsor told representatives of the union that he was required to carry out any and all orders of the Board and Administrator McRee.

Habshey has been an employee of the Board for three years. His present salary is two hundred and ten dollars per month, and he has no other available means of making a livelihood. Union dues are two dollars monthly. The union has expended in excess of three thousand dollars, exclusive of interest and costs, in solicitation efforts and as organizational expense in organizing Board employees. Before the passage of the Solomon Bill, there were approximately eight hundred members of the union employed by the various agencies of the State. Included among these were two hundred employees of the Board. At this time there are about two hundred and fifty members in all State agencies. Many members of plaintiff union employed by the Board have withdrawn from membership since the passage of the Bill. The Board has never recognized the union.

No rules or regulations have been proposed or adopted interpreting or implementing the Solomon Bill. No directives or orders have been issued to supervisors, store managers, or other employees with regard to the administration of the Bill. The Board has adopted no specific policies concerning the Bill other than a general recognition of the duties to enforce all the laws of Alabama relating to the Alabama Alcoholic Beverage Control Board. Neither Habshey nor any other employee has been threatened with discharge or dismissal or deprivation of employee rights, benefits or privileges by reason of continued membership and participation in the plaintiff union. No inquiries or investigations have been made by or on behalf of the Board concerning union membership. No action has been taken by the State Personnel Board or its Director whereby any employee of the Alcoholic Beverage Control Board has been dismissed from his employment or deprived of any of his rights, benefits and privileges accorded him by reason of his public employment in the Merit System of Alabama, because of membership in any labor union. Habshey has enjoyed full Merit System status, and except to the extent that the Solomon Bill has affected his status, presently [fol. 59] enjoys all the rights, benefits and privileges accorded under the Merit System.

The "forfeiture clause" by its terms was without force until thirty days after the effective date of the Bill. This action was instituted on October 7, 1953—eleven days before the expiration of such thirty-day period. No State administrative or judicial proceedings are pending and the Bill is administratively and judicially undefined.

Plaintiffs contend that the challenged statute is self-executing and that it lends itself to no possible construction other than that of unconstitutionality under the Due Process Clause of the Fourteenth Amendment. They insist that they do not have to wait longer before seeking relief in a federal court, because they think that "Alabama's Legislature has used unmistakably simple, clear, and mandatory language" and that "there is neither need for interpretation of the statute nor any other special circumstances requiring the federal court to stay action pending proceedings in the state courts." *Toomer* v. *Witsell*, 334 U. S. 385, 392. The defendants assert among other grounds that plaintiffs

have not exhausted available state administrative and judicial remedies and that consequently this court, as a matter of sound, equitable discretion, should decline to exercise jurisdiction.

The Solomon Bill concerns an important area of State administration and proclaims a broad legislative policy as to such administration. As to employees working for the State, there can hardly be any dispute that the settlement of grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work are matters for the State government to be performed through its legislative and executive departments, and are not matters for collective bargaining to be participated in by a labor union or labor organization. Section 1 of the Act defines "labor union or labor organization," and, as so defined, the Act could well be construed by the state courts simply as prohibiting a public employee from being a member of or participating in such an organization for the purpose of collective bargaining with the State and, as so construed, meet the challenge of unconstitutionality.

[fol. 60] It is the duty of this court, as of all other federal courts, to avoid the unnecessary decision of constitutional questions. *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450. In the McAdory case, the Supreme Court said:

> "* * * In advance of an authoritative construction of a state statute, which the state court alone can make, this court cannot know whether the state court, when called on to apply the statute to a defined case or controversy, may not construe the statute so as to avoid the constitutional question. For us to decide the constitutional question by anticipating such an authoritative construction of the state statute would be either to decide the question unnecessarily or rest our decision on the unstable foundation of our own construction of the state statute which the state court would not be bound to follow. *Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101, 105; see also *Vandenbark* v. *Owens-Illinois Co.*, 311 U. S. 538, 543; *Huddleston* v. *Dwyer*, 322 U. S. 232. Such is not the function of the declaratory judgment." (pp. 470-471.)

The exercise of jurisdiction under the Federal Declaratory Judgment Act is discretionary and not compulsory. *Smith* v. *Massachusetts Mutual Life Ins. Co.* (CA 5), 167 F. 2d 990, *Brillhart* v. *Excess Ins. Co.*, 316 U. S. 491. The remedy by injunction is likewise discretionary. *Peay* v. *Cox, Registrar*, (CA 5), 190 F. 2d 123.

Many recent federal cases reflect the doctrine of abstention whereby the federal courts "exercise a wise discretion" in withholding exercise of jurisdiction. *Railroad Commission of Texas* v. *Pullman Company*, 312 U. S. 496; *Chicago et al.* v. *Fieldcrest Dairies, Inc.*, 316 U. S. 168; *Burford* v. *Sun Oil Co.*, 319 U. S. 315; *Spector Motor Service, Inc.* v. *McLaughlin*, Tax Com., 323 U. S. 101; *American Federation of Labor* v. *Watson*, 327 U. S. 582; *Shipman* v. *Dupre*, 339 U. S. 321; *Alabama Public Service Com.* v. *Southern Ry. Co.*, 341 U. S. 341; *Stefanelli* v. *Minard*, 342 U. S. 117.

We will not undertake to analyze these decisions nor to quote or restate their many applicable observations other than to consider briefly the opinion in the *Watson* case as illustrating the extent to which the Supreme Court has gone in withholding the exercise of jurisdiction. In that case, appellants sued to enjoin enforcement of the "Right to Work" Amendment of the Florida Constitution on the ground that it violated the First and Fourteenth Amendments and the Contract Clause of Article I, Sec. 10, of the Federal Constitution, and was in conflict with National Labor Relations Act. A three-judge court, without de- [fol. 61] termining whether there was equity in the bill or whether the case should be held until an authoritative interpretation of the Florida law by the Florida courts could first be obtained, proceeded at once to a consideration of the constitutional questions. It held that the Amendment did not violate the several constitutional provisions and that there would be time to consider any conflict with the National Labor Relations Act, if and when it arose, since that Act and the Amendment did not on their face appear to be in conflict. The court then vacated its temporary restraining order and dismissed the bill. The Supreme Court stated that the threat to enforce the Florida law was real and imminent; that *quo warranto* proceedings had already been instituted against several of the corporations—

who were parties to the suit based on the fact that they had closed-shop agreements with the unions, and that appellee Watson had announced a policy to prosecute criminally all violators of the law, including appellant unions, their officers, agents, and individual members, unless they gave up their closed-shop agreements and refrained from renewing or entering into any such agreements. The Court held that the bill had equity, but that trial court erred in adjudicating the merits of the controversy, saying:

> ". . . The crux of the matter is the allegation that there is an imminent threat to an entire system of collective bargaining, a threat which, if carried through, will have such repercussions on the relationship between capital and labor as to cause irreparable damage. We conclude for that reason that the bill states a cause of action in equity.
>
> "As we have said, the District Court passed on the merits of the controversy. In doing so at this stage of the litigation, we think it did not follow the proper course. The merits involve substantial constitutional issues concerning the meaning of a new provision of the Florida constitution which, so far as we are advised, has never been construed by the Florida courts. Those courts have the final say as to its meaning. When authoritatively construed, it may or may not have the meaning or force which appellees now assume that it has. In absence of an authoritative interpretation, it is impossible to know with certainty what constitutional issues will finally emerge. What would now be written on the constitutional questions might therefore turn out to be an academic and needless dissertation". (pp. 595-596.)

At the time of the decision in the Watson case, there were proceedings pending in the State court. There are no such proceedings here. However, the application of the rule of abstention is not conditioned upon the pending of a state administrative or judicial proceeding. If the rule were otherwise, a litigant by the mere device of selecting the federal court as his forum, could, in many cases, pre-empt the exercise of jurisdiction.

[fol. 62] This action falls within the sweep of the *Watson*

and other cases last referred to and is one in which the court should withhold the exercise of jurisdiction. However, in line with the procedure approved in several of the cited cases, the cause will not be dismissed, but will be retained and remain pending for a reasonable time to permit the exhaustion of such State administrative and judicial remedies as may be available; and thereafter such further proceedings will be had as may then appear to be lawful and proper.

Done, this the 9 day of November, 1953.

Richard T. Rives, United States Circuit Judge, Seybourn H. Lynne, United States District Judge. H. H. Grooms, United States District Judge.

[fol. 63] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

Civil Action No. 7466

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an unincorporated association; E. J. HABSHEY, Plaintiffs,

vs.

S. F. WINDSOR; FELIX L. PARSONS; J. T. THROWER; WILLIAM K. THAMES; MAURY A. MCWILLIAMS; and R. P. MCREE, Defendants

ORDER DENYING FINAL RELIEF—November 9, 1953

This cause came on to be heard on the 27th day of October, 1953, before a duly constituted district court of three judges. All parties hereto stipulated in open court for submission for final decree upon the pleadings, affidavits and testimony taken orally.

Upon review of the pleadings and proof, and the briefs of the respective parties, and in conformity with the opinion of the court contemporaneously filed herewith:

It is, accordingly, ordered, adjudged and decreed by the court that the final relief for which plaintiffs prayed in

their complaint be and the same is hereby denied; provided, however, that the above-styled action is not hereby dismissed, but is retained and will remain pending for a reasonable time to permit the exhaustion of such State administrative and judicial remedies as may be available; thereafter, such further proceedings will be had herein as may then appear to be lawful and proper.

Done, this the 9 day of November, 1953.

Richard T. Rives, United States Circuit Judge, Seybourn H. Lynne, United States District Judge, H. H. Grooms, United States District Judge.

[fol. 64] In the United States District Court for the Northern District of Alabama, Southern Division

[Title omitted]

Motion to Modify Judgment and to Grant Interim Relief —Filed November 10, 1953

Pursuant to the order of this Court, entered on November 9, 1953, appropriate proceedings will be brought promptly by plaintiffs for construction of the Alabama Statute here involved by the Alabama Courts. In view of the period of time to be consumed in such proceedings, and in order to avoid the irreparable damage which plaintiffs face, as set forth in the pleadings and evidence herein, plaintiffs move this Court for a modification of said order to provide an injunction to prohibit defendants from enforcing said Statute against plaintiffs, E. J. Habshey and Government and Civic Employees Organizing Committee, CIO, and, in particular, to prohibit defendants from, by application of said Act, discharging plaintiff Habshey or in any other way forfeiting rights afforded him under the State Merit System, employment rights, reemployment rights, and other rights, benefits or privileges which he enjoys as a result of his public employment, until further order of this Court.

Respectfully, Arthur J. Goldberg, 1001 Connecticut Avenue, N. W., Washington 6, D. C., David E.

Feller, Thomas E. Harris, 718 Jackson Place, N. W., Washington 6, D. C., Counsel for Government & Civic Employees Organizing Committee, CIO, Cooper, Mitch & Black, By Jerome A. Cooper, Attorneys for Plaintiffs, 1329 Brown-Marx Building, Birmingham, Alabama.

[fols. 65-66] Certificate of service (omitted in printing).

[fol. 67] In the United States District Court for the Northern District of Alabama, Southern Division

[Title omitted]

Assignment of Errors and Prayer Reversal—Filed November 18, 1953

Government and Civic Employees Organizing Committee, CIO, and E. J. Habshey, plaintiffs in the above entitled cause, in connection with their appeal to the Supreme Court of the United States, hereby file the following assignment of errors upon which they will rely in their prosecution of said appeal from the order and judgment of the District Court, entered on November 9, 1953.

The Court erred:

1. In failing to declare the Alabama Statute involved, House Bill No. 231, known as the "Solomon Bill" unconstitutional and void under the Fourteenth Amendment to the Constitution of the United States.

2. In failing to declare the said State Statute unconstitutional and void under the Fourteenth Amendment to the Constitution of the United States as defendants have applied and threaten to apply same to plaintiffs.

3. In failing to enjoin defendants from taking steps or continuing to take steps to effectuate and carry out said Statute against plaintiffs.

4. In failing to enjoin defendants from requiring, pursuant to said Statute, that the individual plaintiff withdraw from membership and participation in the union plaintiff

as a condition of further public employment by the Alabama Alcoholic Beverage Control Board.

5. In declaring that said Statute, if construed as pro- [fol. 68] hibiting a public employee from being a member of or participating in a labor organization for the purpose of collective bargaining with the State, does not violate the Fourteenth Amendment to the Constitution of the United States.

6. In refusing to enjoin defendants from discharging or in any other way requiring forfeiture of the individual plaintiff's rights under the Alabama State Merit System, his employment rights, reemployment rights, and other rights, benefits or privileges which he enjoys as a result of his public employment.

7. In holding that its jurisdiction should not be exercised pending exhaustion of such state and judicial remedies as may be available.

8. In failing and refusing to hold that there is no need for interpretation of the above Statute by the State Courts and, further, by holding, impliedly, that there are available State administrative and judicial remedies adequate to protect plaintiffs' rights guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

9. In failing and refusing to exercise its jurisdiction pursuant to and as granted by the Judicial Code, 28 U. S. C. 1343, 28 U. S. C. 1331, and 28 U. S. C. 2201.

10. In failing to order an injunction to prohibit defendants from enforcing said Statute against plaintiffs and, in particular, to prohibit defendants from, by application of said Statute, discharging the individual plaintiff or in any other way forfeiting rights afforded him under the Alabama State Merit System, his employment rights, reemployment rights and other rights, benefits or privileges which he enjoys as a result of his public employment, pending proceedings in the State Courts of Alabama to be taken pursuant to said order and judgment of November 9, 1953.

Wherefore, plaintiffs Government and Civic Employees Organizing Committee, CIO, and E. J. Habshey pray that the order and judgment of the District Court be reversed, that the prayer of the complaint be granted and judgment

[fols. 69-80] entered enjoining enforcement of and declaring said Statute unconstitutional and void under the Fourteenth Amendment to the Constitution of the United States, and for such other relief as the Court may deem fit and proper.

Arthur J. Goldberg, 1001 Connecticut Avenue, NW, Washington 6, D. C., David E. Feller, 718 Jackson Place, NW, Washington 6, D. C., Thomas E. Harris, Counsel for Government & Civic Employees Organizing Committee, CIO, Cooper, Mitch & Black, By Jerome A. Cooper, Attorneys for Plaintiffs, (Appellants), 1329 Brown-Marx Building, Birmingham, Alabama.

November 18, 1953.

[fol. 81] SUPREME COURT OF THE UNITED STATES

MANDATE—March 17, 1954

UNITED STATES OF AMERICA, ss:

The President of the United States of America,

To the Honorable the Judges of the United States District Court for the Northern District of Alabama:

Filed March 19, 1954

Greeting:

Whereas, lately in the United States District Court for the Northern District of Alabama, before you, or some of you, in a cause between Government and Civic Employees Organizing Committee, CIO, an Unincorporated Association, E. J. Habshey, Plaintiffs, and S. F. Windsor, Felix L. Parsons, J. T. Thrower, et al., Defendants, No. 7,466, wherein the judgment of the said District Court, entered in said cause on the 9th day of November, A. D. 1953, is in the following words, viz:

"This cause came on to be heard on the 27th day of October, 1953, before a duly constituted district court of

three judges. All parties hereto stipulated in open court for submission for final decree upon the pleadings, affidavits and testimony taken orally.

Upon review of the pleadings and proof, and the briefs of the respective parties, and in conformity with the opinion of the court contemporaneously filed herewith;

It is, accordingly, ordered, adjudged and decreed by the court that the final relief for which plaintiffs prayed in their complaint be and the same is hereby denied; provided, however, that the above-styled action is not hereby dismissed, but is retained and will remain pending for a reasonable time to permit the exhaustion of such State administrative and judicial remedies as may be available; thereafter, such further proceedings will be had herein as may then appear to be lawful and proper."

* * * * * * *

[fol. 82] ——as by the inspection of the transcript of the record of the said Court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

[fol. 83] And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and fifty-three of the said Supreme Court, this cause having been submitted on the statement of jurisdiction, motion to dismiss or affirm, and transcript of record,

On consideration whereof, It is ordered by this Court that the motion to affirm be, and it is hereby, granted.

It is further ordered and adjudged that the judgment of the District Court in this cause be, and it is hereby, affirmed with costs.

February 1, 1954.

William E. Davis.

[fol. 84] You, therefore, are hereby commanded that such proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Earl Warren, Chief Justice of

the United States, the seventeenth day of March, in the year of our Lord one thousand nine hundred and fifty-four.

Harold B. Willey, Clerk of the Supreme Court of the United States, By Hugh W. Barr, Deputy.

[Endorsed:] File No. ——, Supreme Court of the United States, No. 505, October Term, 1953, Government and Civic Employees Organizing Committee, CIO, etc., et al., vs. S. F. Windsor, et al., Mandate.

[fol. 85] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

APPLICATION TO SUBSTITUTE—Filed February 8, 1955

Come plaintiffs and respectfully show the Court:

Defendant William K. Thames, as Chairman; defendants J. T. Thrower and Maury A. McWilliams as Members; and defendant R. P. McRee as Administrator, of the Alabama Alcoholic Beverage Control Board have ceased to hold their respective offices and their successors are:

Harrell Hammonds, Chairman
Knox McRae, Member
Clarence V. Evans, Member
Melvin Dawkins, Administrator

The above successors have adopted and threaten to adopt and continue the actions of their predecessors, the original defendants herein, in the enforcement of Act No. 720 (Solomon Act) against plaintiffs, all as complained of in the original complaint here.

Wherefore, plaintiffs respectfully request that this action be continued and maintained against said successors, Harrell Hammonds, Knox McRae, Clarence V. Evans and Melvin Dawkins, as defendants.

Respectfully, Cooper, Mitch & Black, By Jerome A. Cooper.

[File endorsement omitted.]

Proof of service (omitted in printing).

[fol. 86] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

MOTION TO PROCEED TO DISPOSE OF THIS LITIGATION—
Filed April 6, 1955

Plaintiffs respectfully move the Court to proceed to dispose of this litigation on its merits, and in particular to decide, after appropriate proceedings, the constitutional questions raised by the bill of complaint.

As grounds therefor, plaintiffs show that the Supreme Court of Alabama has construed the Solomon Act, HB 222, of the State of Alabama, as applying to plaintiff Government and Civic Employees Organizing Committee, CIO, an unincorporated association. A copy of the Supreme Court of Alabama's decision is attached hereto and made a part hereof. Plaintiffs would further show that as so construed and applied to plaintiff Government and Civic Employees Organizing Committee, CIO, an unincorporated association, said Act violates the Fourteenth Amendment to the Constitution of the United States, all as set forth in the complaint herein.

Respectfully, Cooper, Mitch & Black, By Jerome A. Cooper.

Proof of service (omitted in printing).

[fol. 87] EXHIBIT TO MOTION

March 10, 1955

THE STATE OF ALABAMA, JUDICIAL DEPARTMENT, THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1954-55

3 Div. 702

GOVERNMENT & CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO

v.

S. F. WINDSOR, *et al.*

3 Div. 702-A

S. F. WINDSOR, *et al.*

v.

GOVERNMENT & CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO

Appeals from Montgomery Circuit Court, In Equity

LAWSON, Justice.

This is an appeal from a decree of the circuit court of Montgomery County, in equity, rendered in a declaratory judgment proceeding.

The complainant below was the Government & Civic Employees Organizing Committee, CIO, an unincorporated association, to which we will refer as the Committee. We [fol. 88] will sometimes refer hereafter to the Congress of Industrial Organizations as the Organization.

The Committee is the appellant here and contends that the trial court erred in declaring that it is a labor union or labor organization as defined in Act 720, H. 231, approved September 17, 1953, Acts of Alabama 1953, p. 974 (which the reporter will set out and to which we will sometimes refer hereafter as the Solomon Bill), and in declaring that the provisions of the Solomon Bill have application to complainant and its members, including employees of the State

of Alabama connected with the Alabama Alcoholic Beverage Control Board (sometimes referred to hereafter as the Board).

We are of the opinion that the bill shows a justiciable controversy between complainant and the respondents (*Curry* v. *Woodstock Slag Corporation*, 242 Ala. 379, 6 So. 2d 479) and that the trial court properly proceeded to the rendition of the final decree with the declarations of which we are in accord. The respondents were officers and agents of the Board from the time the bill was filed until submission here.

The evidence shows that the Organization is composed of affiliated national and international unions, *organizing committees,* local industrial unions and industrial union councils. According to i-s constitution it is unquestionably a labor organization "in which employees participate for the purpose (among other purposes) of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work". (Sec. 1 of Solomon Bill)

It is our understanding of the record before me that when the Organization determines that it is advisable to create an international union of CIO, to be composed of employees in a given industry or field of labor, that decision is effectuated in the following manner: Its president, acting under authority of the executive board, appoints a national organizing committee, charged with the duty and [fol. 89] responsibility of organizing the employees into local unions which will later be formed into the international union.

The Committee of instant concern was established as an affiliate of the Organization on March 1, 1950, by the late Phillip Murray, the then president of the Organization, acting under authority of an executive board resolution. The National Organizing Committee, selected by President Murray, consisted of a chairman, assistant chairman, secretary-treasurer, and eleven other members.

In establishing that Committee, President Murray wrote:

> "This Committee is authorized and directed to proceed with the organization of employees in federal,

state, county, municipal and related governmental agencies. The Committee shall undertake to represent and defend the interests of these employees in the realm of collective bargaining and legislative matters in such manner as to afford them the protection and improvement to which they are entitled.

"This Committee shall prepare and promulgate rules, in accord with the CIO Constitution, for governance of Local Unions which shall affiliate with it.

"Such Committee shall be given the same status and representation on the CIO Executive Board as other affiliates of the CIO.

"The CIO shall apply such financial assistance and other aid as it shall deem necessary in connection with the organizing of said Committee.

"The Committee will be expanded as appears appropriate to provide adequate representation to affiliating groups of governmental employees.

"When the Government and Civic Employees Organizing Committee-CIO shall determine that a National Convention shall be held to set up a permanent organization and such organization is formed, the CIO shall issue a charter to such organization as a new International Union."

The rules governing the administration of the Committee and "in Local bodies" were adopted at Washington, D. C. on June 17, 1950. It was provided therein that as to all matters not contained in the rules so adopted, the Constitu- [fol. 90] tion of the Organization shall govern. In the rules, the objects of the Committee are stated to be as follows:

"First. To unite into one organization all eligible workers and to establish as soon as economically and numerically practical an Internation-Union of the CIO.

"Second. To increase the wages and to improve the conditions of employment of our members of legislation, negotiation or other legitimate means.

"Third. To seek the maximum job security of all members and to promote the principle of advancement and promotion based on seniority and merit.

"Fourth. To secure liberal retirement plans to be fully paid for by the employer and employing governmental body.

"Fifth. To seek extension of social security, unemployment compensation, health and welfare legislation to all American workers including governmental workers and employees of non-profit institutions; to strive to liberalize and expand those benefits.

"Sixth. To cooperate with the Congress of Industrial Organizations and its affiliated International Unions and Organizing Committees to the end that all who toil shall become members of the Union of their industry for the purpose of bringing about a more secure, more abundant and happier way of life".

All individuals who become members of the local unions organized by the Committee are required to take an oath to the effect that they will observe the rules of the Committee which, as shown, above, include the Constitution of the Organization.

We think it entirely clear that the provisions of the Solomon Bill have application to a local union sponsored and operated according to the terms and provisions of the rules of the Committee and the constitution of the Organization. Public employees, as defined in the Solomon Bill, who become members of such an operated local union are subject to the penalities therein provided. We do not understand appellant to contend to the contrary.

The record shows that the Committee organized a local [fol. 91] union in this state. It is not identified by name or number in the record. We will sometimes refer to it as the Alabama local. Approximately 250 State employees who worked for the Board joined that local. Only one or two of them continued their membership after the passage and approval of the Solomon Bill.

Neither the Alabama local nor any of its members, past or present, are parties to this litigation, yet in reality it is that local that complai-ant sought to have the trial court declare not to be a labor union or labor organization within the meaning of the Solomon Bill.

It is asserted here by the Committee, the appellant, that on the testimony of its only witness, James W. Battles, the

trial court should have so decreed, irrespective of the terms and provisions of the constitution of the Organization and the rules of the Committee.

Battles was never a member of the Alabama local. He identified himself at one point in his testimony as being a "national representative of the CIO attached to the Government and Civic Employees Organizing Committee." At another point in his testimony he said that he was a staff representative assigned to the Alabama local. Apparently he was that local's guiding hand.

He testified that in June, 1953, he made an effort to negotiate with the members of the Board on behalf of certain of its employees who were then members of the Alabama local. He was unsuccessful. From that time until the passage and approval of the Solomon Bill the membership of the Alabama local remained approximately the same although, according to Battles, all efforts to bargain collectively and to negotiate with the Board were abandoned.

Thereafter, according to Battles, the Alabama local became merely a discussion group wherein the Committee sought to assist the members of the Alabama local privately and in union meetings with respect to their rights and privileges under state and federal laws and with respect to common interest involving the welfare and working conditions of the members and other citizens of the United States and with respect to public affairs, public [fol. 92] figures, economic and political issues.

The constitution, rules and bylaws of a labor union or labor organization are the source of its authority. They constitute the contract between the labor union and its members, as well as the contract between members of the union.—*Alabama State Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. 2d 810. The statement of Battles to the effect that "we" abandoned the usual procedures pursued by labor organizations to accomplish their purposes is in irreconcilable conflict with the declared purpose and object of the Organization and of the Committee. The record before us fails to show any authority whatsoever whereby a local union on its own volition or upon the mere advice of a representative of the Organization may abandon the declared purposes and objects of the parent organization.

Such an attempt to change the purpose of the local union appears to be subversive and prohibited by the constitution and laws of the national organization.—*Congress of Industrial Organizations* v. *City of Dallas (Tex. Civ. App.)*, 198 S. W. 2d 143; *Perez* v. *Board of Police Com'rs of City of Los Angeles*, (Cal. Dist. Ct. of App.), 173 P. 2d 537.

Moreover, there are parts of Battles' testimony which do not support his statement to the effect that after the Board refused to negotiate, the Alabama local became a mere discussion group. The following transpired during the examination of Battles:

> "Q. You said when you couldn't get collective bargaining you resorted to other means that were legitimate. What do you mean by resorting to other means legitimate, toward having the wages raised?
>
> "A. I see what you mean. I went there with a group of employees before the Personnel Board after that, and we did settle quite a few grievances which they had."

We are of the opinion that the decree of 3 Div. 702 should be affirmed, that is the appeal from the final decree.

After the final decree was rendered the respondents gave notice of appeal from a previous decree which overruled their demurrer to the bill. That attempted appeal has been submitted here in the same record as the appeal from the final decree and has been given the number 3 Div. 702-A. [fol. 93] The appeal of the respondents came too late and must be dismissed.—*Jones* v. *Industrial Life and Health Ins. Co.*, 222 Ala. 399, 132 So. 890; 4 C. J. S. 400-402, Appeal and Error, Sec. 212 (d and e). We point out, however, that in our consideration of the appeal from the final decree we indicated the grounds of demurrer here argued by respondents below were not well taken.

The decree in 3 Div. 702 is affirmed.

The appeal in 3 Div. 702-A is dismissed.

Livingston, C. J., Stakely and Merrill, JJ., concur.

[fol. 94] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

NOTICE OF SETTING OF TRIAL—Filed February 5, 1956

Pursuant to the provisions of Title 28, U. S. C. A. § 2284, notice is hereby given that the above-styled action has been set down for hearing at 9:00 o'clock, a. m., on Wednesday, February 15, 1956, in Courtroom No. 1 of the United States District Court, in Birmingham, Alabama, before the Honorable Richard T. Rives, Circuit Judge, the Honorable Seybourn H. Lynne, Chief Judge, United States District Court, and the Honorable H. H. Grooms, District Judge.

This the 5th day of January, 1956.

William E. Davis, Clerk, U. S. District Court, Northern District of Alabama.

Proof of service (omitted in printing).

[fol. 95] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

MOTION OF DEFENDANTS TO DISMISS—Filed February 15, 1956

Now come the defendants in the above styled cause, and move to dismiss this action upon the following grounds, separately and severally:

1. These defendants refile their motion to dismiss heretofore filed in this cause.

2. That the defendant, William K. Thames, J. T. Thrower, Maury A. McWilliams, and R. P. McRee are no longer connected with the Alabama Alcoholic Beverage Control Board in any official capacity.

3. That the successors in office to William K. Thames, J. T. Thrower, Maury A. McWilliams, and R. P. McRee

have not adopted or threatened to adopt and have not continued the actions of their predecessors in this cause.

4. That this cause is now res adjudicata in that the plaintiff, Government and Civic Employees Orgainizing Committee, CIO, an unincorporated association, filed a suit in the Circuit Court of Montgomery County, Alabama, against among others William K. Thames, J. T. Thrower, Maury A. McWilliams and R. P. McRee, and in said suit did not raise the constitutionality of Act No. 720, referred to in the bill of complaint, nor did it seek any judicial construction of the meaning and effect of Act No. 720; that the only thing that said plaintiff litigated in said suit was whether or not it was a union within the meaning of the Solomon Act, a fact which it had already averred to exist [fol. 96] in the present suit which now exists in this court.

(S.) John Patterson, Attorney General, (S.) Gordon Madison, Assistant Attorney General, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 97] In the United States District Court for the Northern District of Alabama, Southern Division

[Title omitted]

Motion of Defendants opposing application for substitution of parties defendant—Filed February 15, 1956

Now come the defendants in the above styled cause and respectfully show unto the court the following:

1. That since January, 1955, J. T. Thrower, William K. Thames, Maury A. McWilliams, and R. P. McRee have not been members of the Alabama Alcoholic Beverage Control Board and administrator, respectively; that since that time Melvin Dawkins, has been the administrator and Harrell Hammonds, Know McRae, and Clarence V. Evans have been the members of the Alabama Alcoholic Beverage Control Board.

2. That the said Melvin Dawkins, Harrell Hammonds, Knox McRae, and Clarence V. Evans, as the successors to

the above named defendants in this action, have not adopted or threatened to adopt or continued the actions of their predecessors, the original defendants in this suit, in the enforcement of Act No. 720 (Solomon Act).

Wherefore, it is prayed that this action be dismissed and that no substitution of parties defendant be allowed.

Respectfully, (S.) John Patterson, Attorney General, (S.) Gordon Madison, Assistant Attorney General, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 98] IN UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

Present: Hon. Richard T. Rives, Seybourn H. Lynne, and H. H. Grooms

File No. 7466 C. A.

Court Reporter: N. P. Howell

[Title omitted]

CLERK'S COURT MINUTES—February 15, 1956

This case having duly come on for a hearing or trial on the 15th day of February 1956 upon motion and merits, transcript of state court proceedings, briefs and affidavits of Maurice Allen, Jerome A. Cooper, and Melvin Dawkins and there appearing Cooper, Mitch & Black for plaintiff, John Patterson, Attorney General of Alabama for defendant; and thereupon the issues raised having been duly presented, argued and submitted to the Court, it was, on February 15, 1956 decided and adjudged by the Court as follows:

Taken under advisement.

William E. Davis, Clerk, By: Dan C. Strong, Deputy Clerk.

Birmingham, Alabama.

[fol. 99] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

Civil Action No. 7466

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an Unincorporated Association; E. J. HABSHEY, Plaintiffs,

versus

S. F. WINDSOR, HARRELL HAMMONDS, KNOX MCRAE, CLARENCE V. EVANS, and MELVIN DAWKINS, Defendants

Before RIVES, Circuit Judge, LYNNE and GROOMS, District Judges.

PER CURIAM OPINION—February 17, 1956

The Alabama statute involved and the nature of this litigation have been fully stated in our earlier opinion in this case reported in 116 F. Supp. 354.[1] In conformity with that opinion, this Court on November 9, 1953, entered its judgment,

[fol. 100] "that the final relief for which plaintiffs prayed in their complaint be and the same is hereby

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[1] In part saying:

"The Solomon Bill concerns an important area of State administration and proclaims a broad legislative policy as to such administration. As to employees working for the State, there can hardly be any dispute that the settlement or grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work are matters for the State government to be performed through its legislative and executive departments, and are not matters for collective bargaining to be participated in by a labor union or labor organization. Section 1 of the Act defines 'labor union or labor organization,' and, as so defined, the Act could well be construed by the state courts simply as prohibiting a public employee from being a member of or participating in such an organization for the purpose of collective bargaining with the State, and, as so construed, meet the challenge of unconstitutionality." Government and Civic Employees Organ. Com. v. Windsor, 116 F. Supp. 354, 357.

denied; provided, however, that the above-styled action is not hereby dismissed, but is retained and will remain pending for a reasonable time to permit the exhaustion of such State administrative and judicial remedies as may be available; thereafter, such further proceedings will be had herein as may then appear to be lawful and proper."

On appeal on the 1st day of February, 1954, the Supreme Court of the United States entered its judgment granting a motion to affirm and ordering and adjudging "that the judgment of the District Court in this cause be, and it is hereby, affirmed with costs." See 347 U. S. 901.

Thereafter on the 19th day of February, 1954, the plaintiff association filed in the Circuit Court of Montgomery County, Alabama, in Equity, its bill of complaint praying for an injunction and a declaratory judgment determining the status of said association, under said Alabama statute. The said State Circuit Court on the 12th day of April, 1954 entered its final decree in said cause, by which it declared in pertinent part that: "Said Statute of Alabama applies to complainant, its activities and its members all as described in the complaint. The prayer for injunctive relief is denied."

On appeal, that final decree was affirmed by the Supreme Court of Alabama on the 10th day of March, 1955, pursuant to an opinion reported in 262 Ala. 785, 78 So. 2d 646.

The case is again submitted to this Court for final decree upon the pleadings, affidavits, and testimony taken orally upon the earlier hearing.

Admittedly, the case has now remained pending, in accordance with the earlier judgment, "for a reasonable time to permit the exhaustion of such State, administrative and judicial remedies as may be available." As indicated, we have heretofore decided that the Solomon Bill can be so construed as to meet the challenge of unconstitutionality, and our said decision has been affirmed by the Supreme Court of the United States. After a thorough reading and consideration of the final decree of the Circuit Court of [fol. 101] Montgomery County in Equity and of the opinion of the Supreme Court of Alabama heretofore men-

tioned, it is clear to us that the Alabama courts have not construed the Solomon Bill in such a manner as to render it unconstitutional, and, of course, we cannot assume that the State courts will ever so construe said statute. Utah Power & Light Co. v. Pfost, 286 U. S. 165, 186; Arizona Copper Co. v. Hammer, 250 U. S. 400, 430; Pelton v. Commercial National Bank, 101 U. S. 143.

Judgment is entered accordingly.

Done, this the 17th day of February, 1956.

Richard T. Rives, United States Circuit Judge, Seybourn H. Lynne, United States District Judge, Hobart H. Grooms, United States District Judge.

[fol. 102] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

Civil Action No. 7466

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an Unincorporated Association; E. J. HABSHEY, Plaintiffs,

versus

S. F. WINDSOR, HARRELL HAMMONDS, KNOX MCRAE, CLARENCE V. EVANS, and MELVIN DAWKINS, Defendants

JUDGMENT—February 17, 1956

This cause coming on to be heard on the 15th day of February, 1956, before a duly constituted district court of three judges, all parties hereto stipulated in open court for submission for final decree upon the pleadings, affidavits, and testimony taken orally.

Upon review of the pleadings and proof, and the briefs of the respective parties, and in conformity with the opinion of the court contemporaneously filed herewith;

It is, accordingly, ordered, adjudged and decreed by the court that this action be and the same is hereby dismissed

with prejudice, and that the costs herein be taxed against the plaintiffs.

Done this the 17th day of February, 1956.

Richard T. Rives, United States Circuit Judge, Seybourn H. Lynne, United States District Judge, Hobart H. Grooms, United States District Judge.

[fol. 103] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

Before RIVES, Circuit Judge, LYNNE and GROOMS, District Judges.

NOTICE OF APPEAL—Filed March 21, 1956

I. Notice is hereby given that Government and Civic Employees Organizing Committee, an unincorporated association, and E. J. Habshey, an individual, plaintiffs in the above action, hereby appeal to the Supreme Court of the United States from the final order and judgment, entered in this action on February 17, 1956, denying, after notice and hearing, a permanent injunction as sought by the bill of complaint and ordering the complaint herein dismissed.

This appeal is taken pursuant to 28 U. S. C. A. Art. 1253.

II. The Clerk is hereby requested to prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and to include in said transcript the following:

1. Complaint with exhibits thereto;

2. All pleadings which have been filed; including this notice;

3. The transcript of the entire proceedings and evidence at the trial of this cause, including the proceedings and evidence on the original hearing for preliminary injunction;

4. All orders and opinions of the District Court, including the final judgment of February 17, 1956.

[fol. 104] III. The following questions are presented by this appeal:

An Alabama statute forfeits all employment rights of a clerk in a State operated retail liquor store, solely because he "joins or participates in . . . or remains a member of a labor organization." Can a State, consistently with the Fourteenth Amendment, exclude such a public servant from further public employment solely because of such membership or participation in a labor union not found by the Legislature to have any particular potential for evil?

Absent any issue as to loyalty, past or present, does constitutional protection extend to a public servant whom State legislation seeks to exclude from employment in a State liquor store because of membership or participation in a labor union, where such exclusion is not directed at any insistence by government employees on the right to strike or to bargain collectively, but is designed to forfeit public employment rights solely because of such membership or participation?

Can a State, consistently with the Fourteenth Amendment, prohibit State employees (of a retail liquor store) from exercising rights of voluntary association, mutual assembly, consultation, discussion and free speech which are provided by membership and participation in a voluntary association?

Does the Statute of the State of Alabama involved in this case (Act No. 730, Acts of 1953, the so-called "Solomon Bill") violate the Fourteenth Amendment on its face and as applied to plaintiffs and to members of plaintiff association?

Cooper, Mitch & Black, By Jerome A. Cooper, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fols. 105-107] Certificate of service (omitted in printing).

[fol. 108] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

[Title omitted]

STIPULATION AS TO RECORD—Filed May 15, 1956

The transcript of oral testimony taken before this Three Judge District Court on the 27th day of October, 1953, having been lost or misplaced, in lieu thereof the parties stipulate as follows:

1. Said oral testimony included in substance the facts and evidence which are incorporated in the transcript of Government & Civic Employees Organizing Committee, CIO vs. S. F. Windsor, et al., Circuit Court of Montgomery County, Alabama, In Equity, No. 26815, which transcript by agreement has been made a part of the record herein.

2. In said hearing of October 27, 1953, plaintiffs' testimony included evidence of the following: Promptly after passage of the Solomon Act, Act No. 720, Alabama Acts of 1953, Plaintiff Habshey and all other employees of the Alabama Alcoholic Beverage Control Board were required by representatives of the Board to read and initial a copy of said Act. Immediately thereafter practically all of the members of complaining union, in the employ of said Board, withdrew their union membership. Plaintiff Habshey remained a member because, as he stated in substance, of his belief that he was as much entitled to belong to such an organization as he was entitled to belong [fol. 109] to his church.

Done this 15 day of May, 1956.

Cooper, Mitch & Black, By Jerome A. Cooper, Counsel for Plaintiffs, (S.) John Patterson, Attorney General, (S.) Gordon Madison, Assistant Attorney General, Counsel for Defendants.

[fol. 110] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. a1] PLAINTIFF'S EXHIBIT 1

GOVERNMENT & CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, AN UNINCORPORATED ASSOCIATION, Appellant and Cross Appellee,

vs.

S. F. WINDSOR, *et als.*, Appellees and Cross Appellants
From—Circuit Court of Montgomery County, *In Equity*

* * * * * * *

[fol. 1] ORGANIZATION OF COURT

STATE OF ALABAMA,
Montgomery County.

At a regular term of the Circuit Court of Montgomery County, Alabama, In Equity, at which the officers authorized by law to hold or serve such Court, were serving, the following proceedings were had in the cause styled: Government & Civic Employees Organizing Committee, CIO, an unincorporated association, vs. S. F. Windsor; Felix L. Parsons; J. T. Thrower; William K. Thames; Maury A. McWilliams; and R. P. McRee.

[fol. 2] IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA—IN EQUITY

No. 26815

GOVERNMENT & CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an Unincorporated Association, Complainant,

vs.

S. F. WINDSOR; FELIX L. PARSONS; J. T. THROWER; WILLIAM K. THAMES; MAURY A. MCWILLIAMS; and R. P. MCREE, Respondents

BILL OF COMPLAINT AND PETITION FOR DECLARATORY JUDGMENT

To the Honorable Judges of the Circuit Court of Montgomery County, Alabama, In Equity:

The bill of complaint and petition for declaratory judgment of Government & Civic Employees Organizing Com-

mittee, CIO, an unincorporated association, against the above-named respondents respectfully shows:

1. Complainant is an unincorporated association, having its principal office in Washington, D. C. It is an affiliate of the Congress of Industrial Organizations and is engaged in organizing and recruiting members among, and the representation of, civilian employees employed by one or more public bodies and social agencies, public or private. Complainant exists and its members participate in complainant for the purpose, among other things, of dealing with such employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, conditions of work and other related matters in order to improve, by negotiation, the conditions of employment for and the quality of service rendered by such employees or to effect such improvement by legislation, or other legitimate means. Complainant derives substantially all of its income from the dues paid by its members who are employed either by governmental bodies or by social agencies, public or private. Complainant has had, until the recent enactment of the Alabama Statute (Exhibit "A" hereto), several hundred members who are employees of the Alabama Alcoholic Beverage Control Board (hereinafter referred to as the "Board".) These members included employees of the Board working at Alabama Liquor Store No. 75, located at 2620 31st Avenue, North, in Birmingham, Alabama. At least one employee of said store still remains a member.

2. The objects of the Congress of Industrial Organizations as set forth in its Constitution include the following:

> ". . . To bring about the effective organization of working men and women of America regardless of race, [fol. 3] creed, color or nationality, and to unite them for common action into labor unions for their mutual aid and protection.
>
> * * * * * * *
>
> ". . . To secure legislation safeguarding the economic security and social welfare of the workers of America, to protect and extend our democratic institutions and civil rights and liberties, and thus to perpetuate the cherished traditions of our democracy."

The rules governing administration of the complainant union provide:

"Article II

* * * * * * * *

"Section 2. Membership in GCEOC shall not be denied by reason of sex, race, creed, color, nationality or religious belief but shall be denied to any avowed or proven fascist, communist or person advocating the overthrow of government by force and violence.

* * * * * * * *

"Article IV

Objects

"First. To unite into one organization all eligible workers and to establish as soon as economically and numerically practical an Internation-Union of the CIO.

"Second. To increase the wages and improve the conditions of employment of our members by legislation, negotiation or other legitimate means.

"Third. To seek the maximum job security of all members and to promote the principle of advancement and promotion based on seniority and merit.

"Fourth. To secure liberal retirement plans to be fully paid for by the employer or employing governmental body.

"Fifth. To seek extension of social security, unemployment compensation, health and welfare legislation to all American workers including governmental workers and employees of non-profit institutions; to strive to liberalize and expand these benefits.

"Sixth. To cooperate with the Congress of Industrial Organizations and its affiliated International Unions and Organizing Committees to the end that all who toil shall become members of the Union of their industry for the purpose of bringing about a more secure, more abundant and happier way of life."

3. All members of complainant, upon admission to membership have pledged their honor faithfully to observe these rules.

4. (a) Respondent S. F. Windsor is District Store Supervisor of the Board in Birmingham, Alabama, and is a resident of Birmingham, Jefferson County, Alabama.

(b) Respondent Felix L. Parsons is the Store Manager of said Alabama Liquor Store, operated by the Board and is a resident of Birmingham in Jefferson County, Alabama.

[fol. 4] (c) Respondents Thames and McRee have been and are residents of Montgomery County, Alabama, and are material respondents to this action. Respondent William K. Thames is Chairman of the Board. Respondents J. T. Thrower and Maury A. McWilliams are members of the Board. Respondent R. P. McRee is the Administrator of the Board. Each is a resident of Alabama.

(d) Respondents Windsor and Parsons are supervisory agents of the Board and all respondents are charged with enforcement of the laws of Alabama governing the Board's operations.

(e) Each respondent is over the age of 21 years.

5. Complainant, as indicated in paragraph 1 hereof, exists for the purpose of dealing with employers under such circumstances and in those jurisdictions in which such dealing is legitimate. Respondents have denied that complainant can legitimately deal with them under the laws of Alabama and have refused to engage in any formal dealings or negotiations with plaintiff with respect to employees of the Board. Complainant has, in accordance with the rules governing its administration abided by respondents' decision not to deal with complainant; and, has sought, after such denial and without negotiation, to assist its members in individual problems arising out of and in the course of their employment by the Board, has consulted with its members privately and in union meetings with respect to its members' rights under the State Merit System, with respect to common interests involving the welfare and working conditions of these members and other citizens of the United States, members of the Union or of other unions, working for the State of Alabama and for private employers; about and upon public affairs and public figures, economic and political issues, both local and national, and candidates for State and Federal offices; upon rights and privileges, arising under Federal legisa-

tion, such as the Social Security Act, Public Housing Acts, Price Control Acts and regulations, and the possibility of extending and giving such rights and privileges to its members and to other citizens; and about matters of Federal and State taxation, such as the form and amounts of taxation and elements of eligibility for the exercise of the right of franchise, under State and Federal laws. In sum, abiding by respondents' denial of any formal relations or dealings with complainant, and without assertion of any right to strike against the Board as employer of its members, complainant has continued to seek to increase the wages and to improve the conditions of employment of, and quality of service rendered by, its members who are employees of the Board, by legislation or other legitimate means, without negotiation.

6. Respondents are charged with the duty of enforcing all laws of the State of Alabama in so far as they effect or apply to employees of the Board. Respondents have [fol. 5] stated their intention to enforce against complainant and against all members of complainant union a Statute of the State of Alabama, House Bill 231, known as the "Solomon Bill" which became effective by approval of the Governor of Alabama upon September 18, 1953, a copy of which is attached hereto and made Exhibit "A" (hereinafter called the "Statute".) This Statute requires and purports to authorize the discharge of any employees of the Board who remain members of or continue to participate in certain types of organizations as defined therein. Respondents claim that complainant is a labor union or labor organization as defined therein and have acted, and are threatening to act upon that interpretation of the Statute.

7. Attached hereto as Exhibit "B" is a written reply of Respondent McRee to a wire of inquiry from members of complainant employed by the Board in Birmingham in said above store and other retail liquor stores.

8. Under such threats of the enforcement of said Act, substantially all of complainants' members employed by the Board withdrew from membership and participation. Because of respondents' acts many such members have resigned from membership and many potential members have declined to join. Complainant, as a result of said mem-

bers' complying with the said Statute, as so construed by respondents, has been substantially damaged. The fruits of organizational expense in excess of several thousand dollars have been largely destroyed and complainant has been deprived of monthly dues in the amount of $2.00 each from a large number of members.

9. Respondents have failed and refused to state that their threats to enforce the Statute against complainant and its members will not be carried out. These threats have been construed, as alleged above, by complainant's members as requiring withdrawal from membership as a condition of further employment by the Board.

10. A justiciable controversy exists between complainant and respondents as to whether said Statute applies to complainant and its members, and as to whether complainant is a "labor union or labor organization" as defined therein. Substantial civil and property rights are dependent upon the determination of this controversy and the actions of respondents in insisting that said Statute applies to complainant and its members and in threatening to enforce, and in enforcing said Statute, against complainant and its members, have rendered a declaratory judgment of this Court necessary to protect such rights of complainant and its members.

11. Complainant denies upon information and belief that said Statute applies to it or its members or that complainant is a labor union or labor organization as defined there- [fol. 6] in, and shows that the actions taken and the threatened actions to be taken by respondents under, and respondents' construction of said Statute with respect to complainant and its members are void and without authority of law.

12. The said enforcement and threats to enforce and apply said Statute against complainant and complainant's members are causing and will continue to cause irreparable injury to complainant. Complainant is without adequate remedy at law.

13. This bill for declaration of complainant's rights is brought, in part, pursuant to the judgment of the United States District Court for the Northern District of Alabama, Case No. 7466, to obtain construction, by the Courts of Alabama, of the Statute. In that Federal Court pro-

ceeding, these respondents assured the Federal Court that the judicial system of Alabama would be available to protect complainant's rights.

Wherefore, premises considered, complainant prays:

1. That this Court take jurisdiction of this bill of complaint and cause proper process to issue to the respondents herein, requiring them to plead, answer or demur within the time required by law, or else suffer a decree pro confesso.

2. That this Court will issue a temporary injunction:

(a) Enjoining and restraining respondents, and all agents, servants and employees of the respondents, their successors in office or any of them from:

1. Taking any steps to effectuate and carry out the provisions of the above Statute against complainant and complainant's members.

2. Using or threatening enforcement of said Statute in any way against complainant or any member of complainant.

3. That this Court will, on final hearing, issue a permanent injunction in accordance with the foregoing prayer for temporary injunction.

4. That this Court will enter a declaratory judgment determining the status of complainant under said Statute and adjudicating that:

1. Said Statute of the Legislature of Alabama has no application to complainant or to its members.

2. Said Statute of the Legislature of Alabama cannot be construed as affecting or applying in any way to complainant or to its members employed by said Board.

3. Complainant is not a "labor union or labor organization" as defined in said Statute.

(S.) Arthur J. Goldberg, (S.) David E. Feller, 1001 Connecticut Avenue, N. W., Washington 6, D. C., [fol. 7] (S.) Thomas E. Harris, Counsel for Government & Civic Employees Organizing Committee, CIO, 718 Jackson Place, N. W., Washington 6,

D. C., (S.) Cooper, Mitch & Black, By —— ——, Attorneys for Complainant, 1329 Brown-Marx Building, Birmingham, Alabama.

STATE OF ALABAMA,
Jefferson County.

Personally appeared before me, the undersigned authority, in and for said State and County, James W. Battles, known to me, who being first duly sworn, deposes and says: That he is a representative of complainant in the above-styled cause, and as such is duly authorized to make this affidavit; that he is familiar with the contents of the foregoing bill of complaint; that the facts averred, where averred therein as facts, are true, and where alleged on information and belief, he has been informed and believes that such facts are true.

(S.) James W. Battles.

Sworn to and subscribed before me this 18th day of February, 1954. (S.) Will Ella Thomason, Notary Public.

EXHIBIT "A"—SOLOMON ACT

Omitted. Printed side page 11, supra.

[fol. 8] EXHIBIT "B"—REPLY OF MCREE, ETC.

Omitted. Printed side page 17, supra.

[fol. 9] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA, IN EQUITY

[Title omitted]

DEMURRER—Filed March 16, 1954

Come the respondents, S. F. Windsor, Felix L. Parsons, J. T. Thrower, William K. Thames, Maury A. McWilliams, and R. P. McRee, separately and severally, in the above styled cause, by their attorneys, and demur to the bill of

complaint and petition for declaratory judgment filed in the above styled cause, and as grounds for said demurrer assign the following, separately and severally:

1. There is no equity in the bill.

2. The bill shows upon its face that complainant is not [fol. 10] entitled to the relief prayed for.

3. That it affirmatively appears that there is no actual, real, substantial and justiciable controversy between complainant and respondent; and the bill affirmatively shows that complainant seeks a hypothetical and advisory opinion concerning the proper construction of a statute of Alabama, namely, Act No. 720 General and Local Acts 1953, page 974, the so-called "Solomon Act."

4. That it affirmatively appears that this cause constitutes a suit against the State of Alabama over which this Court has no jurisdiction by virtue of Section 14 of the Constitution of Alabama 1901.

5. That indispensable parties complainant have not been joined in this suit in that no members of complainant union, who have claims and interests which would be affected by the declaration and relief sought herein, are parties complainant hereto. That the absence of these necessary and indispensable parties deprives this court of jurisdiction to adjudicate this cause.

6. That complainant union has no standing to sue, it appearing that the so-called "Solomon Act" affects public employees and not labor unions, and no controversy exists between complainant and respondents.

7. That complainant union has no standing to sue on behalf of its members.

8. That the court has no jurisdiction to render a declaratory judgment, there being no allegations that no other remedies are not available to complainant.

9. That it affirmatively appears from the verified complaint that no injury, or threat of injury, will be incurred by complainant, or by any member of complainant employed by the Alabama Alcoholic Beverage Control Board, or by any other member of complainant by reason of actions of any of the respondents discharging such members and employees or depriving them of their rights under the State Merit System, employment rights, reemployment

rights, and all other rights, benefits or privileges enjoyed by them in their present public employment, because of membership in and continued membership and participation in the complainant union on the part of these members and employees.

10. That if for any reason any member of complainant is discharged from his employment with the Alabama Alcoholic Beverage Control Board, such member has administrative remedies of appeal pursuant to the Alabama Merit System Act, and particularly Title 55, Section 315, Code of Alabama 1940; but that no member of complainant so employed has attempted to utilize these remedies thus accorded prior to the bringing of this suit; nor has complain- [fol. 11] ant union sought administrative remedies available.

11. That it affirmatively appears that the activities undertaken and contemplated by complainant and its members bring those members of complainant who are also employees of the State of Alabama within the scope and operation of the "Solomon Act."

12. It affirmatively appears that complainant is a "labor union" or "labor organization" within the meaning of the "Solomon Act."

13. For that there is a misjoinder of parties respondent.

14. For that there is a nonjoinder of parties respondent.

15. For that the provisions of Act No. 720, General and Local Acts 1953, page 974, do not require these respondents to pursue any course of conduct in connection therewith.

16. For that these respondents are not required to do or to refrain from doing anything which would injuriously affect the interest of others by the provisions of Act No. 720, General and Local Acts 1953, page 974.

Come the respondents, S. F. Windsor, Felix L. Parsons, J. T. Thrower, William K. Thames, Maury A. McWilliams, and R. P. McRee, separately and severally, in the above styled cause, by their attorneys, and demur to that aspect of the bill of complaint and petition for declaratory judgment filed in the above styled cause, in which said aspect complainant seeks temporary and permanent injunctive relief enjoining and restraining respondents, and agents, servants and employees of respondents and successors of

respondents from taking any steps to effectuate and carry out the provisions of Act No. 720, General and Local Acts 1953, page 974, the so-called "Solomon Act", against complainant and members of complainant; and in which said aspect complainant seeks similar temporary and permanent injunctive relief against "using or threatening enforcement of said statute in any way against complainant or any member of complainant," and as grounds for said demurrer assign the following, separately and severally:

1. There is no equity in the bill.

2. The bill shows upon its face that complainant is not entitled to the relief prayed for.

3. That it affirmatively appears that there is no actual, real, substantial and justiciable controversy between complainant and respondents; and the bill affirmatively shows that complainant seeks a hypothetical and advisory opinion concerning the proper construction of a statute of Alabama, namely, Act No. 720, General and Local Acts 1953, page 974, the so-called "Solomon Act."

4. Respondents assign as further grounds of said demurrer to said aspect and incorporate by reference all grounds hereinabove assigned to the bill as a whole, in such manner [fol. 12] as if said separate and several grounds were expressly and specifically hereinafter enumerated as grounds of demurrer to said defined aspect of the bill.

Come the respondents, S. F. Windsor, Felix L. Parsons, J. T. Thrower, William K. Thames, Maury A. McWilliams, and R. P. McRee, separately and severally, in the above styled cause, by their attorneys, and demur to that aspect of the bill of complaint and petition for declaratory judgment filed in the above styled cause, in which said aspect complainant seeks declaratory judgment determining and adjudicating that Act No. 720, General and Local Acts 1953, page 974, the so-called "Solomon Act," has no application to complainant or to its members; that the said statute cannot be construed as affecting or applying in any way to complainant or its members employed by the Alabama Alcoholic Beverage Control Board; and that complainant is not a "labor union" or "labor organization" as defined in said statute; and as grounds for said

demurrer to said aspect respondents assign the following, separately and severally:

1. There is no equity in the bill.

2. The bill shows upon its face that complainant is not entitled to the relief prayed for.

3. That it affirmatively appears that there is no actual, real, substantial and justiciable controversy between complainant and respondents; and the bill affirmatively shows that complainant seeks a hypothetical and advisory opinion concerning the proper construction of a statute of Alabama, namely, Act No. 720, General and Local Acts 1953, page 974, the so-called "Solomon Act."

4. Respondents assign as further grounds of said demurrer to said aspect and incorporate by reference all grounds hereinabove assigned to the bill as a whole, in such manner as if said separate and several grounds were expressly and specifically hereinafter enumerated as grounds of demurrer to said defined aspect of the bill.

Come the respondents, S. F. Windsor, Felix L. Parsons, J. T. Thrower, William K. Thames, Maury A. McWilliams, and R. P. McRee, separately and severally, in the above styled cause, by their attorneys, and demur to that aspect of the bill of complaint and petition for declaratory judgment filed in the above styled cause, in which said aspect complainant avers that public employees who are members of complainant are not within the scope of Act No. 720, General and Local Acts 1953, page 974, the so-called "Solomon Act," and that complainant is not a "labor union" or "labor organization" within the meaning of that Act, and as grounds for said demurrer to said aspect respondents assign the following separately and severally:

[fol. 13] 1. There is no equity in the bill.

2. The bill shows upon its face that complainant is not entitled to the relief prayed for.

3. That it affirmatively appears that there is no actual, real, substantial and justiciable controversy between complainant and respondents; and the bill affirmatively shows that complainant seeks a hypothetical and advisory opinion concerning the proper construction of a statute of Alabama, namely, Act No. 720, General and Local Acts 1953, page 974, the so-called "Solomon Act."

4. Respondents assign as further grounds of said demurrer to said aspect and incorporate by reference all grounds hereinabove assigned to the bill as a whole, in such manner as if said separate and several grounds were expressly and specifically hereinafter enumerated as grounds of demurrer to said defined aspect of the bill.

Wherefore, respondents pray the judgment of this Court as to whether or not they may be required to answer the bill of complaint and petition for declaratory judgment filed herein, and further pray that these demurrers be sustained on the foregoing grounds, and that they be discharged with their reasonable costs in this behalf expended.

Respectfully submitted, (S.) Si Garrett, Attorney General, (S.) Gordon Madison, Assistant Attorney General, (S.) Jesse M. Williams, Montgomery, Alabama, Attorneys for Respondents.

[File endorsement omitted.]

[fol. 14] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA—IN EQUITY

[Title omitted]

ANSWER—Filed March 31, 1954

Come *sht* respondents, S. F. Windsor, Felix R. Parsons, J. T. Thrower, William K. Thames, Maury A. McWilliams, and R. P. McRee, separately and severally, by their attorneys, and for answer to the bill of complaint and petition for declaratory judgment filed in this cause, say as follows:

1. The complaint fails to state a claim against respondents upon which relief can be granted.

2. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs one through three of the complaint.

3. Respondents admit the allegations of paragraphs 4 (a)-(e) except that they deny that respondents Windsor

and Parsons are charged with enforcement of the laws of Alabama governing the Board's operations.

4. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint, except that respondents aver that complainant is an organization in which members participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rate of pay, hours of employment or conditions of work.

5. Respondents deny each and every allegation contained in paragraph 6 of the complaint.

6. Respondents admit the allegations contained in paragraph 7 of the complaint.

7. Respondents deny each and every allegation and averment contained in paragraph 8 of the complaint.

8. Respondents deny each and every allegation and averment contained in paragraph 9 of the complaint.

9. Respondents deny each and every allegation and averment in paragraph 10 of the complaint.

10. Respondents deny each and every allegation, averment and legal conclusion contained in paragraph 11 of the complaint.

[fol. 15] 11. Respondents deny each and every allegation, averment and legal conclusion contained in paragraph 12 of the complaint.

12. Respondents deny each and every allegation, averment and legal conclusion contained in paragraph 13 of the complaint.

Wherefore, premises considered, having fully answered said bill of complaint and petition for declaratory judgment, respondents pray that they be discharged in this cause with their costs herein expended, for which they will ever pray.

(S.) Si Garrett, Attorney General, (S.) Gordon Madison, Assistant Attorney General, (S.) Jesse W. Williams, Montgomery, Alabama, Attorneys for Respondents.

Filed in open court on this the 31st day of March, 1954, Carter, Judge.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA—IN EQUITY

No. 26815

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an Unincorporated Association, Complainant,

vs.

S. F. WINDSOR; FELIX L. PARSONS; J. T. THROWER; WILLIAM K. THAMES; MAURY A. McWILLIAMS; and R. P. McREE, Respondents

DECREE—March 31, 1954

This cause coming on to be heard is submitted for decree on bill of complaint and demurrers filed thereto.

The Court, having had the opportunity of hearing argument both by the attorneys representing the complainant and the respondents, is of the opinion that the demurrers are not well taken. It is, therefore

Ordered, adjudged and decreed by the Court, that the demurrers filed to the complaint are hereby overruled.

An answer being immediately filed and the parties agreeing to proceed immediately, no further time is given for further pleadings.

[fol. 16] Done this 31st day of March, 1954.

(S.) Eugene W. Carter, Circuit Judge.

[File endorsement omitted.]

[fol. 17] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA, IN EQUITY

No. 26815

[Title omitted]

Before: Hon. EUGENE W. CARTER, Circuit Judge.

Montgomery, Alabama, Wednesday, March 31st, 1954, 8:30 o'clock A. M.

Present: Cooper, Mitch and Black, Esqs., by Jerome A. Cooper, Esq., and William E. Mitch, Esq., for Complainant,

Si Garrett, Esq., Attorney General, by Gordon Madison, Esq., Assistant Attorney General, and Jesse W. Williams, Esq., for Respondents.

TRANSCRIPT OF TESTIMONY, RULINGS AND EXCEPTIONS

COMPLAINANT'S EVIDENCE

JAMES W. BATTLES, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cooper:

Q. What is your name?
A. James W. Battles.
Q. Where do you live?
A. I live in Birmingham, Alabama.
Q. Have you any association with the unincorporated association known as the Government and Civic Employees [fol. 18] Organizing Committee, CIO, the complainant in this action?
A. Yes, sir; I have. I am national representative of the CIO attached to the Government and Civic Employees Organizing Committee.
Q. Are you familiar with the rules which govern the administration of this organization?
A. Yes, sir.
Q. I show you a document marked Complainant's Exhibit 1 and ask you to tell me whether or not they are all the rules governing the organization of the complaining party in this action?
A. They are.
Q. Will you state whether or not it is part of the duty of individuals who join your organization to bind themselves to observe the rules of that organization?
A. Yes, sir. They take an oath to that extent.
Q. Did that bind hundreds of individuals who joined while they were employed by the Alcoholic Beverage Control Board?

A. Yes, sir.

Q. I will refer to that as the Board in my questions and you will understand that. Are you familiar with the action of the Alabama Legislature we are concerned with here, the Solomon Bill?

A. Yes, sir.

Q. Prior to the passage of that Bill do you know how many individuals employed by the Board had become members of your organization?

A. Yes, sir.

Q. About how many in rough, round numbers?

A. I would say approximately two hundred and fifty to three hundred.

Q. Did you request any persons who are members of the Board to engage in bargaining with you on behalf of this organization?

Mr. Madison: That is objected to unless he states the names of those and gives some reference to the Solomon Bill.

Mr. Cooper: I will withdraw the question.

By Mr. Cooper:

Q. Did you make that request prior to, or at any time prior to the passage of the Solomon Bill?

A. Yes.

[fol. 19] Q. About when, in your best judgment and recollection?

A. About June of 1953. And I am not certain about that.

Q. Did they engage in bargaining with you?

A. No.

Q. Did they indicate to you whether or not they would bargain with you?

A. They stated they couldn't.

Q. And thereafter did you insist on bargaining with them?

Mr. Madison: We don't know who this was. We wish to object to that line of questioning on the theory it took place prior to the passage of the Solomon Bill.

The Court: Overrule your objection. We are going into the whole thing.

By Mr. Cooper:

Q. After information came to you they couldn't go on bargaining with you with respect to the employees of your organization did you continue to seek bargaining with them?

A. No, sir. We adopted the Board decision to carry out the procedure they established for us.

Q. Thereafter what sort of activities were carried on by the association members, and by those employees of the Board who were in your association?

A. As soon as we were denied the right to bargain collectively, we agreed to run sort of a more or less discussion group as to what we were going to do; we discussed various public issues of the day; we talked on broad subjects, on civil rights; we have talked on political issues—and more or less a discussion group.

Q. Could you state whether or not you discussed such subjects as Federal Social Security, or public housing acts, and participated in discussions concerning the benefits under those acts?

A. Yes, sir, we did. In fact, we discussed any act which had to do with the well-being of people, anything which was economical, or political, or otherwise.

Q. Did you discuss economic and political issues concerning other people not in your organization?

A. Yes.

[fol. 20] Q. Did you assert the right to strike against the Board?

A. No, sir.

Q. In short, would it be accurate to state that you did nothing under the auspices of your organization but have meetings to improve the circumstances of your members by means that were legitimate, in your opinion, and other than by collective bargaining?

A. That is true. Since we were denied collective bargaining we resorted to any methods we could that were legitimate.

By the Court:

Q. What do you mean by legitimate?

A. In keeping with various laws of Alabama.

Q. What did you do?

A. In other words, we couldn't—we asked to have the right of collective bargaining, we were denied that right, and after that, of course, we still continued to meet, and they had regular meetings. And at those meetings various questions came up, such as employees' status under Civil Service, and also go over the various rules to determine the advisability for us to request them for a decision—things like that.

Q. You said when you couldn't get collective bargaining you resorted to other means that were legitimate. What do you mean by resorting to other means legitimate, toward having the wages raised?

A. I see what you mean. I went there with a group of employees before the Personnel Board after that, and we did settle quite a few grievances which they had.

By Mr. Cooper:

Q. That is before the State Personnel Board?

A. That was before the State Personnel Board. And that is legitimate.

By the Court:

Q. That is what I am getting at; I just wondered what you did for the purpose of the record.

A. Yes, sir.

By Mr. Cooper:

Q. Did you consider any action of the Legislature which had anything to do with the conditions of each individual?

A. Yes, sir. We studied all pending bills before Congress and State Legislatures, and discussed the pros and [fol. 21] cons of this prospective legislation.

By the Court:

Q. What kind of bills are you talking about?

A. We had a few discussions on the Social Security Act pending, and asked State employees under, certain segments of State employees under Social Security.

Q. You said bills before——

A. Congress and Legislature.

Q. Any bills coming up, or bills already offered, to be still presented?

A. They were bills already offered.

Q. No bills you all offered or sponsored before the Legislature or before Congress?

A. We did discuss a bill they were contemplating sponsoring in the Legislature, and we had copies of it.

By Mr. Cooper:

Q. What was that bill?

A. A bill to provide for collective bargaining for State employees.

Q. I believe some action was taken by the organization to request instruction or direction from the Board as to what action the Board would take after the Solomon Act was passed; isn't that so?

A. Yes.

Q. I would like you to look at the document which is Exhibit B to the complaint filed herein and tell me whether or not that is a copy of the reply which was received by your organization?

A. Yes, sir, that is the reply which was received by the Union President.

Mr. Cooper: I don't know whether it is necessary to offer an Exhibit to the Bill, or not.

The Court: I don't think it is. It is already in as part of the Bill here. There is no controversy about that on the other side?

Mr. Madison: No.

By Mr. Cooper:

Q. Do you know what action, if any, was taken by the members of the Board to individual employees of the [fol. 22] Board on the Solomon Bill after it was passed?

A. Yes, sir. They sent a bulletin to each of the ABC stores, I believe, signed by Mr. McRee, enclosing a copy of the Solomon Bill, and calling attention of each employee to the Bill, and requesting them to read and initial it indicating they had done so.

Q. After these occurrences took place you have just related what took place in your membership?

A. The membership just practically evaporated.

Q. About how many men when thus being addressed withdrew from the Union at that point?

A. Approximately two hundred and fifty.

Q. What were the dues of the Union at that time?

A. $2 per month.

Q. How much would you estimate in your best judgment had been spent in the salaries and other organizing expenses incidental to completing membership up to that point?

Mr. Madison: Objected to as incompetent, irrelevant and immaterial, and has no bearing on the issues in this case here.

The Court: Although this is in Equity, I don't think under objection it would be relevant. There are no damages asked.

(Exception noted for the Complainant by direction of the Court.)

By Mr. Cooper:

Q. Did you state to your membership any opinion as to whether or not the Solomon Bill applied to your organization?

(Objected to. Objection sustained. Exception noted for the Complainant by direction of the Court.)

Mr. Cooper: We make an offer to prove it has been the position of the complainant this Act does not apply.

The Court: I would let him state what his opinion is.

By Mr. Cooper:

Q. What has been your position, and what is your position now, as a representative of the complaining organization yourself, as to whether or not the Solomon Act, [fol. 23] whether or not your organization is a Labor Union or Labor organization as defined in the Act?

(Objected to. Objection overruled.)

A. It is not anyway in the world a labor organization within the meaning of the Bill, and the law does not apply to us.

The Court: That is left up to the Court. That is one of the grounds of controversy. Ordinarily it is not relevant, but in this case I will let it in on that theory, because it is a legal question.

Mr. Cooper: Can we submit the Solomon Act we are referring to?

The Court: Why don't you introduce the copy in there? It is part of the law and the Court knows it.

By Mr. Cooper:

Q. We want to be certain there is no question on the record. In your testimony referring to the Solomon Bill, is it correct is refers to Act 720, House 231, Regular Session 1953?

A. Yes, sir.

OFFERS IN EVIDENCE

Mr. Cooper: We want to offer this copy of the rules of the organization which has been identified.

(Previously marked Complainant's Exhibit 1.)

By Mr. Cooper:

Q. I show you a document marked for identification Complainant's Exhibit 2, and ask you if that is the Constitution of the CIO through which your association is affiliated?

A. Yes, sir.

Mr. Cooper: We want to offer that in evidence.

(Marked "Complainant's Exhibit 2, 3/31/1954, WHL.")

By Mr. Cooper:

Q. One or two further questions. Do you recall whether or not in the course of your association activities you had participated in or assisted members in any way in pursuing their rights for compensation for injuries, or anything of that sort?

A. Yes, sir, but not of the ABC Board employees speci-

[fol. 24] fically. Other State employees we have done that.

The Court: Of course, that would not be admissible. This is just the ABC Board.

Cross-examination.

By Mr. Madison:

Q. Where do you live?

A. Birmingham, Alabama.

Q. How long have you lived in Birmingham?

A. Practically all of my life.

Q. Thirty years?

A. Thirty-four.

Q. When did you first become associated with the complainant in this case?

A. Do you mean the ABC employees?

Q. With the complainant.

A. April 1st, 1951. In fact, tomorrow is the anniversary.

Q. 1951 is the year you first joined the organization?

A. Yes, sir.

Q. When you joined the organization at that time did you get a card of any kind to identify you with a number?

A. I would like to correct that. I believe it is the first of April, 1952. I have been with them two years.

Q. At the time you joined did you get a card on that day?

A. Yes, sir; I had belonged to the Union.

Q. What Union did you belong to?

A. I belonged to Local 11, Government and Civic Employees Organizing Committee, CIO, in Washington.

Q. That is the complainant in this case?

A. No, sir, it isn't. This is a Local Union which has been chartered by the complainant.

Q. Are you familiar with the Government and Civic Employees Organizing Committee, CIO, an unincorporated association?

A. Yes, sir.

Q. Did they give you a Union card when you joined?

A. Yes, sir.

[fol. 25] Q. Any number on it, or anything?

A. No, sir.

Q. Have you your card with you now?

A. I don't really know. (Indicating.)

Mr. Cooper: I cannot see what relevancy Mr. Battles' Union card would have.

The Court: If this is some Union card, I presume so.

By Mr. Madison:

Q. This is a Union card?

A. That is right.

Q. And other members belonging to your organization have a similar card?

A. Right.

Q. And other members belonging to your Union in the State of Alabama also have cards?

A. Yes, sir.

Q. Which they call Union cards?

A. Yes, sir.

Q. After the passage of the Solomon Act we have referred to here, did any member of the ABC Board, or the Director or Administrator of the ABC Board to your knowledge fire or discharge any employee that was a member of your Union here?

A. No, sir.

Q. As I understand it, you had how many members in your Union that were employees of the Alcoholic Beverage Control Board?

A. Approximately two hundred and fifty.

Q. How many members ceased their membership in your Union?

A. All of them except perhaps two.

Q. I believe you stated as far as you know, you stated there wasn't any Union member discharged because of the passage of the Solomon Act.

A. No, sir.

Q. They all ceased to become members of your Union?

A. Yes, sir. It was after we received a letter from Mr. McRee stating the Solomon Bill would be enforced.

[fol. 26] Q. Isn't it a fact some of the members discontinued their membership after the passage of the Solomon Act?

A. I don't understand the question.

Q. Didn't some members of the Union discontinue their membership with you after the passage of the Solomon Act, or within the thirty day period set forth here?

A. Yes, sir.

Q. As you stated, that is not the result of action taken by the Board, or by Mr. McRee as administrator, was it?

A. No direct action, no, sir.

Q. What position do you occupy in the Union; are you an official in the Union?

A. I am a staff representative assigned to the Union.

Q. Does the Union have offices; tell me something about the local set-up. Does the Union have offices?

A. The Local don't.

Q. Just the local members?

A. It is just set up like any democratic organization; President, Vice-President, Recording Secretary.

Q. Who handles your legislative work; have you a legislative committee; who attends to that business for you?

A. Well, actually I don't know. I don't think that Union ever had a committee. I could be wrong. Most Unions do have legislative committees.

Q. Did you participate in any way in the discussion of the Bill that you said you all thought about sponsoring, legislation about collective bargaining in the State?

A. Yes, sir.

Q. Who participated with you in that?

A. Various members of the Union.

Q. Were they all members of the Alabama Beverage Control Board, employees of the Alabama Beverage Control Board?

A. Yes.

Q. Did you and the other officers of the Union, did you and the officers of the Union have any advance knowledge or notice of the introduction of the Solomon Bill?

[fol. 27] (Objected to. Objection overruled.)

Q. Did you have any advance knowledge or notice of the Solomon Bill?

A. The first time I knew anything about it was when it was placed in the hopper, and we knew it right then.

Q. When you say you knew about it when it was placed in the hopper, didn't you all immediately take means to do all you could to bring about its defeat?

A. Certainly, sir.

Q. At that time you took the position that Bill was applicable to you, did you not?

A. Actually I didn't take any position because we were against anything.

Q. You didn't take any steps to have it put out of there?

A. No, sir.

Q. You did regard it as being applicable to your employees?

A. We thought it might be.

Q. What method did you use, did you contact legislators and other Unions to try to defeat the bill?

A. Certainly. In fact, all types of labor organizations were working through their representatives to try to defeat the Bill, yes, sir.

Q. Did you take the lead, or were you working in conjunction with other Unions?

A. We were working in conjunction with other Unions, yes, sir.

Q. One of the main purposes of your Local is to bargain collectively with employers; isn't that one of the main purposes?

A. I would say that is one of the purposes, yes, sir.

Q. In other words, you believe in united strength, where a large number of you get together you can bring about better working conditions, and better working hours and rates of pay, where you collectively go to an employer and bargain with him?

A. Yes, sir.

Q. And you do use in instances where you feel justified a strike to bring about the enforcement of what you think is a legitimate request?

A. Yes, sir.

Q. And your organization has done that, hasn't it?

A. Yes, sir.

[fol. 28] Q. And I believe you stated before the passage of the Solomon Act you did attempt, or your members did attempt, or your officers, or who had this bargaining duty, did attempt to bring about collective bargaining with the Alcoholic Beverage Control Board, or its administrator?

A. Yes, sir.

Q. Were you told at that time by Mr. McRee, or Mr.

Thames, that it was the policy of the State it could not bargain collectively?

A. Yes, sir, told by Mr. McRee.

Q. You did attempt collective bargaining with them?

A. Yes, sir.

Q. And they took the position they couldn't do that?

A. Yes, sir.

Q. After the passage of the Solomon Act did you attempt to bargain collectively with them in any way?

A. Only to the extent we asked them if the Act applied to us.

Q. Is this letter attached hereto—you have seen this letter, haven't you? (Indicating.)

A. Yes, sir.

Q. Was that the only thing Mr. McRee or the Board has said to you or the officers of your organization?

A. No, sir. I asked Mr. Shack Windsor, who is a store supervisor in Birmingham—asked him prior to getting an answer—I asked Mr. Windsor whether or not they were going to enforce the Act against the ABC employees, and he indicated that he would not, but that he would carry out the orders of the ABC Board and Mr. McRee.

Q. In other words, he told you as far as he was concerned he wouldn't do anything, but would carry out the orders that were given him?

A. He said he would carry out the orders of the Board.

Q. In your Bill of Complaint filed here there is an allegation, "Complainant exists and its members participate in complainant for the purpose, among other things, of dealing with such employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, conditions of work, and other related matters in order to improve, by negotiation, the conditions of employment for and the quality of service rendered by such employees or to affect such improvement by legislation, or other legitimate means." That is true, is it not?

[fol. 29] A. Yes, sir.

Q. In Article IV of the Constitution, the second clause appears—this is averred in the Bill—I haven't seen the Constitution—I hand you here 1952 Constitution of the Congress of Industrial Organizations, and this is one which has been introduced in evidence, is it not?

A. Yes, sir.

Q. Among the objects stated here, the second object there is—read it into the record for us.

A. "To extend the benefits of collective bargaining and to secure for the workers means to establish peaceful relations with their employers, by forming Labor Unions capable of dealing with modern aggregat-s of industry and finance."

Q. Now, in the rules which have been introduced in evidence, Article IV, Objects, read the second of those objects into the record for me, please.

Mr. Cooper: We have introduced these things and they are in the record. I think it is a little bit misleading to take a paragraph and offer it as such in the record. We don't want to encumber the record by reading the whole thing. The whole document is in. We want the whole story before your Honor.

The Court: If he wasn't under Cross-examination it would be a different proposition. He can ask him about anything in there for the purpose of Cross-examination. The whole book is introduced in evidence, and the Supreme Court can see it and go over it and determine whichever is right.

The Witness: "To increase the wages and to improve the conditions of employment of our members by legislation, negotiation or other legitimate means."

By Mr. Madison:

Q. You used the word "negotiation," and among the pledges which you take is one of allegiance of members of the organization to its rules, is it not?

A. Yes.

Q. Is the allegation in Paragraph 3 of the Bill, "All members of complainant, upon admission to membership have pledged their honor faithfully to observe these rules," [fol. 30] means those two things I just asked you to read in the record?

A. Yes, sir.

Q. You have all done that?

A. Yes, sir.

Q. I asked you a while ago about your Union card. What is the date on your Union card?

A. January, 1954, to January, 1955.

Q. And that is a card which is issued to you just like the cards issued to employees of the ABC Board?

A. No, sir. It is a similar card, but isn't like them.

Q. It is a similar card?

A. Yes, sir.

Q. You do issue a Union card to members of the ABC Board?

A. Yes, sir.

Q. I mean to employees of the ABC Board.

A. Yes, sir.

Q. Does the complainant Union have in its membership any other employees of the State of Alabama other than the employees of the ABC Board?

A. Yes, sir.

Q. Do you still have now some of them as members?

A. Yes, sir.

Q. How many, in your best judgment?

(Objected to. Objection sustained.)

Q. Did you state the number of employees of the ABC Board that are now members of your Union?

A. I don't believe I did.

Q. Well, how many are they now?

A. I think probably two. I know there is one.

Mr. Cooper: That is all we have in chief.

[fol. 31] COMPLAINANT'S EXHIBIT 1

RULES OF GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO

Adopted at Washington, D. C., June 17, 1950

Revised Oct. 16, 1952

Introduction

Civilization demands an orderly conduct of human affairs.

These rules governing administration of the Government and Civic Employees Organizing Committee-CIO and its

local bodies are intended to preserve the individual rights of the members as well as to protect the Organization with which they have affiliated.

Working together, with good will and zeal, we can look forward to an early date when these rules will, by the democratic action of delegates to a constitutional convention, be transformed into the constitution of a great and enduring International Union.

Milton Murray, Secretary-Treasurer.

Preamble

The Government and Civic Employees Organizing Committee-CIO was established March 1, 1950, by Philip Murray, President of the Congress of Industrial Organizations, acting under authority of an Executive Board resolution. [fol. 32] In establishing the Committee, President Murray wrote:

"This Committee is authorized and directed to proceed with the organization of employees in federal, state, county, municipal and related governmental agencies. The Committee shall undertake to represent and defend the interests of these employees in the realm of collective bargaining and legislative matters in such manner as to afford them the protection and improvement to which they are entitled.

"This Committee shall prepare and promulgate rules, in accord with the CIO Constitution, for governance of Local Union which shall affiliate to it.

"Such Committee shall be given the same status and representation on the CIO Executive Board as other affiliates of the CIO.

"The CIO shall apply such financial assistance and other aid as it shall deem necessary in connection with the organizing of said Committee.

"The Committee will be expanded as appears appropriate to provide adequate representation to affiliating groups of governmental employees.

"When the Government and Civic Employees Organizing Committee—CIO shall determine that a National Convention shall be held to set up a permanent organization and such organization is formed, the CIO shall issue a charter to such organization as a new International Union."

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Article I

Name

This organization shall be known as the Government and Civic Employees Organizing Committee-CIO, hereafter referred to as GCEOC.

Article II

Jurisdiction

Section 1. Jurisdiction of GCEOC shall include all civilian workers employed by governmental bodies within the United States, its territories and possessions, and all political subdivisions, and all employees of agencies engaged in public service or social welfare work, and all employees of schools, libraries, hospitals and educational institutions, whether public or private. Employees of GCEOC shall be eligible for membership.

Section 2. Membership in GCEOC shall not be denied by reason of sex, race, creed, color, nationality or religious [fol. 34] belief but shall be denied to any avowed or proven fascist, communist or person advocating the overthrow of government by force and violence.

Article III

Officers

Section 1. The National Organizing Committee shall be selected by the President of the CIO. The National Committee shall consist of a chairman, assistant chairman and secretary-treasurer to be designated by the President of the CIO and an appropriate number of members to provide adequate representation for the CIO and the members of GCEOC.

Section 2. The National Committee shall meet not less than once every six (6) months at a time and place to be set by the Executive Committee and shall meet further at the call of the Chairman or at the written request of a majority of the members of the Committee.

Article IV

Objects

First. To unite into one organization all eligible workers and to establish as soon as economically and numerically practical an International Union of the CIO.

Second. To increase the wages and to improve the conditions of employment of our members by legislation, negotiation or other legitimate means.

Third. To seek the maximum job security of all members and to promote the principle of advancement and promotion based on seniority and merit.

Fourth. To secure liberal retirement plans to be fully paid for by the employer or employing governmental body.

Fifth. To seek extension of social security, unemployment compensation, health and welfare legislation to all American workers including governmental workers and employees of non-profit institutions; to strive to liberalize and expand these benefits.

[fol. 35] Sixth. To cooperate with the Congress of Industrial Organizations and its affiliated International Unions and Organizing Committees to the end that all who toil shall become members of the Union of their industry for the purpose of bringing about a more secure, more abundant and happier way of life.

Article V

Powers and Duties of Officers and Executive Committee

Section 1. The Chairman of the Committee shall preside at all meetings of the Committee. His signature shall appear by facsmile or otherwise on all checks issued by the Committee. He shall generally supervise the functions and activities of the organization, and shall interpret the rules of GCEOC. He may, for cause, discharge or discipline any employee of the Committee.

Section 2. The Assistant Chairman shall preside at all meetings of the Committee in the absence of the Chairman. He shall generally assist the Chairman and shall perform such duties as may be assigned to him.

Section 3. The Secretary-Treasurer shall cause to be recorded the proceedings of all conventions and all sessions

of the Committee. He shall have charge of and preserve the books and records, files, documents and effects of the organization. He shall receive and make receipt for all monies due the Committee. He shall, from the funds of the Committee, pay all bills and expenses. His signature shall appear on all checks issued by the Committee. He shall provide for a semi-annual audit of the books and financial records of the organization which shall be reported to the Committee. He shall be bonded for the security of the organization's funds and for the faithful performance of his duties in an amount to be determined by the Committee. He may visit in person, or appoint a representative to visit, any local of the Committee if, in his opinion, such a visit is necessary or desirable for the benefit of the organization. He shall perform such other duties as may be assigned to him by the Chairman or by the Committee.

Section 4. The Executive Committee shall consist of the three officers and not less than two of the Committee to be [fol. 36] elected by the Committee. The Executive Committee shall meet on call of the Chairman and not less than quarterly. It shall generally supervise affairs of the organization and, between meetings of the National Committee, determine policy and program of the organization. The Executive Committee shall see to it that the Secretary-Treasurer is properly bonded, books audited and the funds of the organization accounted for.

Section 5. The Executive Committee shall be empowered to enter into a contract of Group Insurance to provide benefits for Local Unions, members, and/or employees of GCEOC and to establish a benefit fund, through voluntary contributions of affiliated Local Unions, members, and/or employees which fund shall be used for the purpose of paying the premiums on such contracts and for such other uses as may be deemed consistent with the powers created by this section.

Section 6. The GCEOC on all other matters not contained herein, shall be governed by the Constitution of the CIO.

Article VI

Duties of Local Union Officers

Duties of President

It shall be the duty of the President to preside at all meetings of the Local Union and preserve order. He shall decide all questions of order, subject to an appeal to the Local Union. He shall have the right to vote at all elections of officers, and when the members are equally divided on other questions, he shall have the deciding vote. He shall call special meetings when he deems advisable or by request of five percent (5%) of the members in good standing of the Local Union, or by direction of the Executive Board, such meeting to consider only matters for which special meeting is called. He shall perform such other duties as the Local Union may require of him.

Duties of Vice-President

It shall be the duty of the Vice-President to perform all the duties of the President in case of absence of that officer, and to assist in preserving order in the Local Union.

[fol. 37] **Duties of Recording Secretary**

It shall be the duty of the Recording Secretary to record the proceedings of the Local Union in a book kept for that purpose; to read all communications and perform such other duties as the Local Union may require. He shall also have custody of the Local Union Seal and shall be held responsible for any misuse of same.

Duties of Financial Secretary

Section 1. It shall be the duty of the Financial Secretary to receive all monies due the Local Union, and pay the same to the Treasurer, from whom he shall take a receipt. He shall also keep accurately the accounts of the Local Union with its members, and shall at all times have his books open for examination by the auditing committee or trustees, and perform such other duties as the Local Union may require of him. He shall make out the various reports required by

the Secretary-Treasurer of the GCEOC and forward such reports to him in accordance with instructions.

Section 2. Should it be proven that a Local Union Financial Secretary has failed to report monthly for full membership of the Local Union as provided for in his report to the Secretary-Treasurer of the GCEOC and transmit to him the full amount of initiation fees and per capita, he shall be suspended from all privileges and benefits until the deficiency is made good, and he shall be liable to the Secretary-Treasurer of GCEOC for the full amount unpaid.

Section 3. The Financial Secretary shall keep a record of all transfer request forms issued and received.

Section 4. His accounts shall be subject at all times to audit by the Secretary-Treasurer of GCEOC or an accredited representative of GCEOC.

Duties of Treasurer

It shall be the duty of the Treasurer to receive from the Financial Secretary all money collected by him. He shall deposit all monies received belonging to the organization [fol. 38] in a bank designated by it, in the name of the Local Union, Local Number, GCEOC. He shall cause to be issued to the Financial Secretary, a receipt for all money turned over to him or deposited to his credit in the regular bank account. He shall issue a separate receipt for the amount of money turned over to him at any time, or for such deposit made. He shall sign all checks and have them countersigned by the President and/or Financial Secretary. He shall keep regular and correct accounts of all money received and paid by him, and report at each meeting the balance of cash as shown by the last report, the amount received since, the total checks issued and authorized, and the balance remaining. His accounts shall be open for examination by the Auditing Committee or Trustees at any time when called upon. His books shall be subject at all times to audit by the Secretary-Treasurer of GCEOC or an accredited representative of the Committee. It shall be permissible to combine both the duties of Financial Secretary and Treasurer into one office. (Financial Secretary-Treasurer.)

Duties of Executive Board

Section 1. The Executive Board shall transact all business of the Union, when the membership is not in session, faithfully execute the orders of the membership, adopt measures in the interest of the Union, and recommend such action to the Union as it deems necessary. It shall receive and make recommendations in regards to reports by Standing Committees and officers. All actions of the Executive Board shall be subject to approval or disapproval by the membership.

Section 2. The Executive Board may advise or control the course of action of any or all of the Union Officers and committees, except as otherwise provided.

Section 3. The Executive Board, subject to the approval of the Union, may fix the compensation to be paid to any member, officer or other person employed by the Union.

Section 4. The Executive Board shall meet at least once a month. Special meetings may be called upon reasonable notice by the President or by majority of members of the [fol. 39] Executive Board.

Duties of Sergeant-at-Arms

It shall be the duty of the Sergeant-at-Arms to see that all present are entitled to remain; introduce candidates and attend to visiting members.

Duties of Guard

Guards may be selected by the Local Union, whose duty it will be to take charge of the door and see that no one enters who is not entitled to.

Duties of Trustees

It shall be the duty of the Trustees to audit books quarterly, have charge of the hall and all property of the Local Union, subject to the direction of the Local Union, and perform such other duties as the Local Union may require.

Article VII

Jurisdiction of Local Unions

Section 1. The Organizing Committee shall define the jurisdiction of the Local Unions. It may permit or direct the grouping of employees of various divisions into a single Local for the purpose of efficient functioning and effective organization.

Section 2. The Organizing Committee may, at its discretion, authorize the issuance of a charter or charters to any unit or division of an amalgamated Local Union.

Section 3. Insofar as practicable, each unit or division included in an amalgamated Local Union shall have representation on the Local's Executive Board.

Section 4. No Joint Board, Council or Local Union chartered by GCEOC shall undertake legal action without prior approval of the Executive Officers of GCEOC.

[fol. 40]

Article VIII

Local Unions

Section 1. All Local Union officers shall be elected annually at a regularly scheduled membership meeting by a majority vote of the members present or by referendum and shall serve until their successors are elected and qualified, at which time all money, official records and documents, and all property belonging to the Local Union shall be turned over to such successors.

Section 2. The date of Local elections for Local Union officers must be generally advertised among the members at least one week previous to the date of the election.

Section 3. No person shall be eligible to act as a Local Union officer who is not a member in good standing of GCEOC.

Section 4. Grievance Committee members, stewards, and members of other committees, shall be elected by the membership as the occasion requires and in accordance with the by-laws of the Local Union.

Section 5. No person shall hold two offices in a Local Union at the same time; except that this provision shall not apply to the Grievance Committeemen or Stewards.

Section 6. All affiliated Local Unions shall submit their by-laws and other rules to the Secretary-Treasurer of GCEOC for approval and shall file a letter annually setting forth changes therein or affirming the continuance of the approved by-laws.

Section 7. Meetings of the Local Union shall be held at least once a month, except upon approval of the Executive Officers of GCEOC.

Section 8. All Local Unions shall become affiliated with the State Industrial Union Council of the CIO in the state in which they are located and with the appropriate city, county or regional Industrial Union Council in their locality. No Local Union shall have other affiliations except the aforementioned without the prior approval of GCEOC or its Executive Officers.

[fol. 41]

Article IX

Initiation Fees and Dues

Section 1. The initiation fee shall be a minimum of two ($2.00) dollars, payable at the time of signing application for membership. One-half of each initiation fee shall be remitted to GCEOC. Dues shall be a minimum of two dollars ($2.00) per month, payable in the month to which said dues apply. Changes in the amount of dues, initiation fees or per capita specified herein may be made only with the approval of the Executive Officers of GCEOC, subject to approval of the Executive Committee of GCEOC. No assessments shall be levied by a Local Union on their membership without the prior written approval of the National Office of GCEOC.

Section 2. Except as herein provided, no applicant for membership shall be regarded as being a member in good standing until the full amount of his initiation fee and the dues and assessments for the month during which he applied for membership have been paid.

Section 3. Any member in arrears for three months in regard to dues or assessments, unless officially exonerated from payment of same, shall be suspended. A suspended member can be reinstated only by paying initiation fee again and such other penalties as may be imposed by a Local Union; such penalty shall not exceed the total amount

of dues and assessments delinquent plus five ($5.00) dollars. One-half the amount of any such penalties shall be remitted to GCEOC by the Local Union.

Section 4. The full amount of all dues and initiation fees collected by each Local Union shall be deposited by the appropriate officers of the Local Union in a bank account in the name of the Local Union, Local Number, GCEOC-CIO. The officers of each Local Union shall forward to the Secretary-Treasurer of GCEOC on or before the 15th of the following month, one-half of each initiation fee collected and one ($1.00) dollar per capita per member a month collected by the Local Union; said per capita to include five ($0.05) cents subscription for the official GCEOC publication.

[fol. 42] Section 5. The Secretary-Treasurer of GCEOC shall upon receipt of any remittance of dues or initiation fees by a Local, acknowledge receipt of same by forwarding communication to the Local Union and/or organizer in charge.

Section 6. When any Local Union fails to report and remit to the Secretary Treasurer of GCEOC in regard to initiation fees and dues, as provided for herein, said Secretary-Treasurer shall notify the President and Recording Secretary of the Local Union of the fact, and failing to receive a satisfactory response within ten days thereafter, shall suspend it from membership and any Local Union so suspended shall be recorded on a delinquent basis.

Section 7. Local Unions placed on the delinquent list shall not be reinstated until they have filed all delinquent reports, paid all arrearages, and a fine of two ($2.00) dollars for each one hundred (100) members or fraction thereof for each monthly violation.

Section 8. In all cases where Local Unions desire exoneration from the payment of dues or initiation fees, the request for exoneration must be signed by the Local Union President and the Financial Secretary and Recording Secretary, but no Local Union shall be exonerated until the request is approved by the Secretary-Treasurer of GCEOC.

Section 9. Individual members of a Local Union who have not worked five days in any one month may be exonerated from the payment of dues, provided that such members

are idle through no fault of their own. All individual members so exonerated must be reported to the Secretary-Treasurer of GCEOC on the monthly report of the Financial Secretary.

Section 10. When exoneration is granted, the request must be renewed each month. However, the required report must be sent to the Secretary-Treasurer of GCEOC and marked "exonerated".

Section 11. If any Local Union for any cause disbands, or should its charter be revoked, the charter, seal, all monies, supplies and property, including real estate, belonging thereto, shall be taken over by GCEOC; providing [fol. 43] that any remaining members of such Local Unions in good standing shall be given transfer cards.

Section 12. All Local Union officers entrusted with the finances of the organization shall be bonded by the Secretary-Treasurer of GCEOC, cost of which bond shall be borne by the Local Union; the bond to be secured and the amount thereof to be determined by him.

Section 13. It shall be the duty of every member to see that his Local Union is in good standing at all times, and any member failing to report to the Secretary-Treasurer of GCEOC any delinquency on the part of his Local Union shall suffer any penalty applied to the Local Union for such delinquency.

Article X

Transfer Cards

Section 1. A Local Union in good standing may issue to a member in good standing a transfer card transferring his membership to another Local Union.

Section 2. All members must immediately transfer to and be accepted by the Local Union having jurisdiction over the place of their employment.

Article XI

Collective Bargaining

Section 1. The policy of GCEOC shall be to resolve any dispute between employees and employers by negotiations, conciliation, mediation or arbitration. Recourse to any

other action shall be taken only with written approval of the Executive Officers of GCEOC.

Section 2. No Local Union shall undertake action in violation of the Constitution or of statutes valid thereunder.

Article XII

General

The Executive Committee of GCEOC may issue such additional rules and regulations as they may deem advisable and necessary to carry through and perform the [fol. 44] effective work of the Organization, not inconsistent with the Rules and Regulations herein contained, and with the approval of the CIO.

Article XIII

The Executive Officers of GCEOC shall have the authority to issue charters to Local Unions upon application of ten (10) or more members. Charter application fee shall be twenty-five ($25.00) dollars, covering the charter, seal, and initial supplies for the Local Union. All Local Unions must be chartered by and shall be under the jurisdiction of and subject to the regulations and other laws of GCEOC. Charters may be revoked or suspended by the Executive Officers of GCEOC who shall have full authority to take charge and possession of books, records, funds, and property of the Local Union and manage its affairs. An appeal from the decision may be made to the Executive Board of the GCEOC, then to the Congress of Industrial Organizations. But, pending such appeal, the order of suspension or revocation shall be obeyed in all respects.

Article XIV

Trials and Appeals

Section 1. Any member of the Union found guilty of dishonesty, mis-conduct, or other acts detrimental to the welfare of the Union, may be fined, suspended, or expelled by the Local Union in which he holds membership after notice and opportunity for hearing given as provided in this Article.

Section 2. A member of the Union may file written charges against any other member with the Recording Secretary of the Local Union in which he holds membership. The Recording Secretary shall transmit a copy of the charges to the accused, by registered mail, at his last known address, together with written notice of the time and place of the hearing thereon which shall be held not less than one week after the date of the mailing of the notice.

Section 3. Hearings and decisions on all charges shall be held and made by the Executive Board of the Local Union or by such other body as the By-Laws of the Local Union [fol. 45] may provide. Their findings shall be submitted in writing within thirty days following said hearing and shall be subject to the approval of the general membership at its next regular meeting or a special meeting called for that purpose.

Section 4. Appeals from the decision under Section 3 may be taken by the accused or by the member or members filing the charges to the Executive Committee of the GCEOC. All appeals shall be filed in writing with the Secretary of the body to which such appeals are addressed within thirty days after the rendition of a decision by the body from which the appeal is taken. Appeal from the decision of the Executive Committee of the GCEOC may be taken to the Congress of Industrial Organizations.

Section 5. Local Unions may appeal directly to the Executive Committee of the GCEOC.

Appendix

It is desirable to administer an oath of obligation to all new members of the Union as well as an oath of office to be taken by Local Union Officers at the time of their installation. The following ceremonies are recommended to those Local Unions instituting such procedure.

Oaths of Obligation

Initiation Ceremony for Members

The President shall say to the Sergeant-at-Arms: "You will now place the candidate or candidates before me for the obligation." The Sergeant-at-Arms advances with the

candidate or candidates and places them in front of the President's station. All newly elected members before being admitted to full membership shall subscribe to the following obligation:

"I, ..., Pledge my honor to faithfully observe the constitution and laws of this Union; to comply with all the rules and regulations for the government thereof; not to divulge or make known any private proceedings of this Union; to faithfully perform all the duties assigned to me [fol. 46] to the best of my ability and skill; to so conduct myself at all times as not to bring reproach upon my Union, and at all times to bear true and faithful allegiance to the Government and Civic Employees Organizing Committee-CIO."

Installation Ceremony of Officers

The installation ceremony may be performed by the retiring president, acting president, or any regular commissioned organizer. The installing officer says: "Give attention while I read to you the obligation: Do you hereby pledge on your honor to perform the duties of your respective offices as required by the constitution of this Union; to bear true and faithful allegiance to the Government and Civic Employees Organizing Committee-CIO, to deliver all books, papers, and other property of the Union that may be in your possession at the end of your term to your successor in office, and at all times conduct yourself as becomes a member of this Union?" Officers respond, "I do."

The installing officer then says: "Your duties are defined in the laws of the GCEOC, and in your obligation. Should any emergency arise not provided for in these, you are expected to act according to the dictates of common sense, guided by an earnest desire to advance the best interests of the National Union and this Local Union.

"I trust you will all faithfully perform your duties, so that you may gain not only the esteem of your brothers, but what is of even more imp-rtance, the approval of your conscience.

"You will *not* assume your respective stations."

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE—CIO

Affiliated with Congress of Industrial Organizations
805 G St., N. W., Washington 1, D. C.

Committee:

Anthony J. Federoff, Chairman.

[fol. 47] John L. Yancey, Assistant Chairman.

Milton Murray, Secretary-Treasurer.

John V. Riffe, David J. McDonald, Joseph Fisher, Joseph Bogan, Patrick J. Brady, John Evans, Frank Felony, Carey Haigler, Ewald Sandner, Michael DiPirro, Hilda Siff.

COMPLAINANT'S EXHIBIT 2

CIO

1952

Constitution

CONGRESS OF INDUSTRIAL ORGANIZATIONS
CONSTITUTION

of

Congress of
Industrial Organizations

1952

[fol. 48] Preamble

The Congress of Industrial Organizations grew out of the needs of the unorganized workers of America which could be met most effectively by the industrial form of organization. Since its formation in 1935, the CIO has grown strong because the service it has given to American workers has made ours a better America. We of the CIO are the sons and daughters of ancestors who came to America

to escape absolutism in government, bigotry in religion, and economic exploitation. We of the CIO are proud of this American quest for liberty and the struggle for equality. We seek, today, to implement this great heritage. We are dedicated to the responsibility for furthering economic opportunity, religious freedom, and political participation.

Democracy stems entirely from free choice. Diligently practiced, it is the only logical human formula for the attainment of economic and political independence; for the realization of a just and equitable return on one's labor; for guarantees of full employment, of social security, and of the protection of the family as an institution.

In the achievement of this task we turn to the people because we have faith in them; and we oppose all those who would violate this American emphasis of respect for human dignity, all those who would use power to exploit the people in the interest of alien loyalties.

The struggle for human freedom is a continuous one. The task of those who would bring security and greater understanding to mankind throughout the world is endless. It is in this all consuming struggle, however, that men and organizations make their contributions to a better life. Therefore, we in the CIO glory in our heritage and in the hope of our future. Racial persecution, intolerance; selfishness, and greed have no place in the human family. We will not be satisfied until ours is a world of free men and women and of happy children. It's to these ends that this Constitution of the CIO is dedicated. It is the charter of our lives; through it we seek to maintain and extend liberty and opportunity here and throughout the world.

[fol. 49] Constitution

Article I

Name

This organization shall be known as the "Congress of Industrial Organizations" (CIO).

Article II

Objects

The objects of the organization are:

First. To bring about the effective organization of the working men and women of America regardless of race, creed, color or nationality, and to unite them for common action into labor unions for their mutual aid and protection.

Second. To extend the benefits of collective bargaining and to secure for the workers means to establish peaceful relations with their employers, by forming labor unions capable of dealing with modern aggregates of industry and finance.

Third. To maintain determined adherence to obligations and responsibilities under collective bargaining and wage agreements.

Fourth. To secure legislation safeguarding the economic security and social welfare of the workers of America, to protect and extend our democratic institutions and civil rights and liberties, and thus to perpetuate the cherished traditions of our democracy.

Article III

Affiliates

Section 1. The Organization shall be composed of Affiliated national and international unions, organizing committees, local industrial unions and industrial union councils.

Sec. 2. Certificates of affiliation shall be issued to national and international unions and organizing committees by the Executive Board.

Sec. 3. Certificates of affiliation shall be issued to local industrial unions by the Executive Board. The Executive Board shall issue rules governing the conduct, activities, affairs, and the suspension and expulsion of local industrial unions. It shall be the duty of the Executive Board to com- [fol. 50] bine local industrial unions into national or international unions or organizing committees. Any local industrial union or group of local industrial unions may

request the Executive Board to authorize such combination. The decision of the Executive Board may be appealed to the convention, provided, however, that pending the appeal the decision shall remain in full force and effect.

Sec. 4. Certificates of affiliation shall be issued to industrial union councils by the Executive Board. Industrial Union Councils shall be organized upon a city, state or other regional basis as may be deemed advisable by the Executive Board and shall be composed of the locals of national unions, international unions and organizing committees, and local industrial unions and local industrial union councils within the territorial limits of such council. It shall be the duty of national and international unions and organizing committees to direct their locals to affiliate with the proper industrial union councils. It shall be the duty of all local industrial unions and local industrial union councils to affiliate with the proper industrial union councils. The Executive Board shall issue rules governing the conduct, activities, affairs, and the suspension and expulsion of industrial union councils. The decision of the Executive Board may be appealed to the convention, provided, however, that pending the appeal the decision shall remain in full force and effect.

Sec. 5. The number of members in each national or international union, organizing committee, and local industrial union for any purpose under the constitution shall be the number of members for which per capita dues have been paid and the number of members for which exoneration has been granted by the Executive Board, pursuant to the constitution. It shall be the duty of each affiliate to furnish reports to the Organization showing its membership.

Sec. 6. National or international unions and organizing committees may not be suspended or expelled except upon a two-thirds vote at the convention, or, without limitation on the foregoing powers of the convention, by a two-thirds vote of the Executive Board in the cases specified in Section 10 of Article VI. This provision may not be amended except by a two-thirds vote at the convention.

[fol. 51]

Article IV

Officers and Executive Board

Section 1. The officers shall consist of a president, an executive vice president, and a secretary-treasurer, who shall be the executive officers, and eight vice presidents. Each officer shall be a member of an affiliate, shall be elected by a majority of the votes cast at each regular annual convention, shall serve until his successor is elected at the next regular annual convention and shall assume office immediately upon election. In the event that more than two candidates are nominated for any one of the foregoing offices, and no one candidate receives a majority of the votes cast, all except the two candidates receiving the highest votes shall be eliminated from the list of candidates, and a second vote taken.

Sec. 2. In the event of a vacancy in the office of the President, Executive Vice President, Secretary-Treasurer or Vice President by death, resignation or otherwise, the Executive Board by majority vote of all its members shall determine the successor, who shall serve the unexpired term, or until a successor for the unexpired term is chosen at a special convention, which may be called for that purpose. In the event of such a vacancy in the office of the President, the Secretary-Treasurer shall within ten days from the date of the vacancy call a special meeting of the Executive Board upon ten days' notice for the purpose of determining the successor.

Sec. 3. The convention shall elect the Executive Board which shall be composed of one member from each affiliated national and international union and organizing committee. Each such affiliate shall nominate one of its duly qualified officers for such membership to the Executive Board. The President, Executive Vice President, Secretary-Treasurer and Vice Presidents shall be members of the Executive Board by virtue of their office.

Sec. 4. No individual shall be eligible to serve either as an officer or as a member of the Executive Board who is a member of the Communist Party, any fascist organization, or other totalitarian movement, or who consistently pur-

[fol. 52] sues policies and activities directed toward the

achievement of the program or the purposes of the Communist Party, any fascist organization, or other totalitarian movement, rather than the objectives and policies set forth in the constitution of the CIO.

Sec. 5. In the event of a vacancy in the membership of the Executive Board other than the officers, due to termination of office in the affiliate which nominated the member, or to death or resignation or otherwise, the Executive Board shall determine the successor who shall serve the unexpired term. The affiliate shall nominate one of its duly qualified officers for such successor.

Sec. 6. National headquarters shall be maintained at Washington, D. C.

Article V

The Duties of the Officers

President

Section 1. The President shall preside over the convention and meetings of the Executive Board, exercise supervision of the affairs of the Organization, and function as the chief executive officer.

Sec. 2. The President shall interpret the meaning of the Constitution and his interpretation shall be subject to review by the Executive Board. Between sessions of the Executive Board he shall have full power to direct the affairs of the Organization, and his acts shall be reported to the Executive Board for its approval.

Sec. 3. The President shall have authority, subject to the approval of the Executive Board, to appoint, direct, suspend or remove such organizers, representatives, agents and employees, as he may deem necessary.

Sec. 4. The President shall make full reports of the administration of his office and of the affairs of the Organization to the convention.

[fol. 53] Executive Vice President

Sec. 5. The Executive Vice President, under the supervision of the President, shall be Director of Organization and Councils, shall direct the organizational and field staff, and shall perform such other duties as the President may assign.

In case of and during the President's absence or incapacity the Executive Vice President shall assume the powers and duties of the President.

The salary of the Executive Vice President shall be fixed by the Executive Board.

Secretary-Treasurer

Sec. 6. The Secretary-Treasurer shall cause to be recorded the proceedings of all conventions and all sessions of the Executive Board. He shall have charge of and preserve the books and records, files, documents and effects of the Organization. He shall provide for a semi-annual audit of the books and financial records of the Organization which shall be reported to the Executive Board. He shall be bonded for the security of the Organization's funds and for the faithful performance of his duties in an amount to be determined by the Executive Board.

Sec. 7. The Secretary-Treasurer shall perform such other duties as may be assigned to him by the President or the Executive Board. The salary of the Secretary-Treasurer shall be fixed by the Executive Board.

Vice Presidents

Sec. 8. The Vice Presidents and Executive Officers shall meet bi-monthly and shall act as an Executive Committee to counsel and advise with the President on policy matters. Each Vice President shall carry out such special assignments as may be necessary in the judgment of the President to advance the work of the organization.

[fol. 54]

Article VI

Duties of the Executive Board

Section 1. The Executive Board shall enforce the constitution and carry out the instructions of the conventions, and between conventions shall have power to direct the affairs of the Organization.

Sec. 2. The Executive Board may establish bureaus and departments and create such committees as may be necessary to the affairs of the Organization.

Sec. 3. The Executive Board shall make the necessary

arrangements for the maintenance of financial books and records, the receipt of all funds due the Organization, the deposit, investment, holding and disbursement of such funds. The Executive Board may appoint such employees as may be necessary for these purposes. Real estate necessary to the affairs of the Organization may be acquired, held, leased, mortgaged and disposed of by the Executive Board in the names of the Officers, and their successors in office, as trustees for the Organization.

Sec. 4. The Executive Board members shall attend all regular and special meetings and shall perform such duties as may be assigned to them.

Sec. 5. The Executive Board shall hold quarterly meetings each year. Special meetings of the Board shall be convened by the President when necessary or when requested by a majority of the members of the Executive Board. A quorum of the Executive Board shall be a majority of the members. Questions coming before the Executive Board shall be decided by a majority vote of its members present at a quorum, except as otherwise provided in the Constitution. Any member may demand a roll call vote on any question and in such event, each Executive Board member shall cast as many votes as there are members of his affiliate. The number of members of each affiliate for such purpose shall be determined as of the month preceding the month in which the meeting is held. Where a roll call vote is taken, the officers shall have no vote except the President, who shall cast the deciding [fol. 55] vote in the case of a tie.

Sec. 6. Any dispute between two or more affiliates may be submitted to the Executive Board which shall make such recommendations to the parties in dispute as it shall deem advisable and report to the convention.

Sec. 7. The Executive Board shall have the power to file charges and conduct hearings on such charges against any officer of the Organization or other member of the Executive Board, on the ground that such person is guilty of malfeasance or maladministration, and to make a report to the convention recommending appropriate action. The Executive Board must serve such officer with a copy of the written charges a reasonable time before the hearing.

Sec. 8. The Executive Board shall have the further power to refuse to seat or to remove from office any member of the Executive Board, or to remove from office any officer, who is found by the Board, by a two-thirds vote after notice and hearing, to be ineligible to serve under the provisions of Article IV, Section 4. Any action of the Executive Board under this section may be appealed to the Convention, provided, however, that such action shall be effective when taken and shall remain in full force and effect pending the appeal.

Sec. 9. The Executive Board shall have the power to investigate any situation involving an affiliate on the ground that such affiliate is conducting its affairs and activities contrary to the provisions of the Constitution, and to make recommendations to the affiliate involved and to make a report to the convention.

Sec. 10. The Executive Board shall have the further power, upon a two-thirds vote, to revoke the Certificate of Affiliation of or to expel or to take any other appropriate action against any national or international union or organizing committee the policies and activities of which are consistently directed toward the achievement of the program or the purposes of the Communist Party, any fascist organization, or other totalitarian movement, rather than the objectives and policies set forth in the constitution of the CIO. Any action of the Executive Board under this section may be appealed to the Convention, provided, how-
[fol. 56] ever, that such action shall be effective when taken and shall remain in full force and effect pending the appeal.

Sec. 11. The Executive Board shall provide for the regular audit of the books and accounts of the Organization.

Sec. 12. The Executive Board shall report its actions, decisions and management of the affairs of the Organization to the convention.

Sec. 13. The members of the Executive Board shall be paid all legitimate expenses incurred in performing their duties as members of the Executive Board.

Sec. 14. The Executive Board shall have the power to adopt such rules, not inconsistent with the Constitution, as it may deem necessary to carry out its duties and powers.

Article VII

Convention

Section 1. The convention shall be the supreme authority of the Organization and except as otherwise provided in the Constitution, its decisions shall be by a majority vote.

Sec. 2. A convention shall be held each year during the last quarter of the year at a time and place designated by the Executive Board. The Executive Board shall give at least 30 days' notice of the time and place which it so designates. Special conventions may be called upon 30 day's notice by the Executive Board.

Sec. 3. The Call for a special convention must include a statement of the particular subject or subjects to be considered at the convention and no other business shall be transacted at such convention. A special convention shall be governed by the provisions for regular conventions.

Sec. 4. A majority of the delegates seated shall constitute a quorum.

Sec. 5. Each national and international union and organizing committee and each local industrial union shall be entitled to one vote for each member. Each industrial union council shall be entitled to one vote.

[fol. 57] Sec. 6. Each national or international union and organizing committee shall be entitled to the number of delegates indicated in the following scale:

Up to 5,000 membership, 2 delegates
Over 5,000 membership, 3 delegates
Over 10,000 membership, 4 delegates
Over 25,000 membership, 5 delegates
Over 50,000 membership, 6 delegates
Over 75,000 membership, 7 delegates
100,000 membership, 8 delegates for the first 100,000 members and one additional delegate for each additional 50,000 or majority fraction thereof.

Each local industrial union and industrial union council shall be entitled to one delegate. Local industrial unions may combine with other local industrial unions in a reasonable distance of one another and elect delegates to represent them.

Sec. 7. Any affiliate which, at the opening date of the convention, is in arrears to the Organization for per capita tax for two months or more shall not be entitled to representation to the convention.

Sec. 8. The number of members of each national and international union, organizing committee and local industrial union for the purpose of the convention shall be the average monthly number on which per capita tax is paid or exoneration granted for the year prior to and including the second month preceding the month of the opening date of the convention; provided, that where affiliation has occurred during the year the average shall be computed from the month of affiliation. The Secretary-Treasurer shall submit to the convention a printed list showing the number of votes and delegates to which each affiliate is entitled.

Sec. 9. Questions may be decided by a division or show of hands. A roll call may be demanded by the delegates representing thirty (30) per cent or more of the total numbers of votes at the convention.

Sec. 10. Not less than 30 days prior to the opening of the [fol. 58] convention, the Secretary-Treasurer shall furnish each affiliate with credential blanks in duplicate, which must be attested as required on the blanks. The duplicate shall be retained by the delegate, and the original sent to the Secretary-Treasurer, and no credential shall be accepted later than ten days prior to the opening date of the convention.

Sec. 11. Prior to the opening date of the convention, the Executive Board shall meet and constitute itself or a subcommittee as the Credentials Committee for the convention. Appeals from its decision shall lie to the floor of the convention. The convention shall not be constituted for business until after the Credentials Committee shall have examined and reported on credentials of all delegates present at the scheduled time on the opening date of the convention.

Sec. 12. All members of the Executive Board who are not elected as delegates shall be ex-officio delegates to the convention with all the rights and privileges of elected delegates, but without vote.

Sec. 13. All resolutions, appeals, and constitutional

amendments to be considered by the convention shall be sent not less than ten days prior to the opening date of the convention to the Secretary-Treasurer, who shall sort and distribute them among the chairman of appropriate committees.

Sec. 14. The President shall appoint, prior to the opening date of the convention and subject to the approval of the convention, such committees as are necessary to conduct the affairs of the convention. Such committees shall meet before the opening date of the convention and shall proceed to consider all resolutions, appeals, reports, and constitutional amendments submitted to the convention.

Article VIII

Revenue

Section 1. Each national and international union and organizing committee shall pay on or before the 15th day of each month, for the preceding month, a per capita tax of ten cents per member per month.

[fol. 59] Sec. 2. Each local industrial union shall pay on the 15th of each month, for the preceding month, a per capita tax of one dollar per member per month. The local industrial unions shall also pay to the Organization one-half of the initiation fee received by such local industrial union from its members, which payment to the Organization shall in no case be less than $1 per member.

Sec. 3. Any affiliate which is in arrears to the Organization for per capita tax for two months or more shall not, unless exonerated in accordance with the provisions of this Constitution, be in good standing, and shall not be entitled to representation on the Executive Board until restored in good standing by the payment of all per capita tax due under the provisions of this Article.

Sec. 4. The Executive Board may exonerate any national and international union, organizing committee and local industrial union from the payment of per capita tax due to the Organization for any month for the members in good standing of such affiliate who are unemployed due to strike, lock-out or other involuntary cause.

Sec. 5. Each affiliate, upon the issuance of a certificate of affiliation, shall pay to the Organization the sum of $25.

Sec. 6. Each industrial union council shall pay to the Organization an annual fee of $25.

Article IX

This constitution, except as otherwise provided, may be amended by a majority vote at the convention.

Article X

This constitution shall become effective immediately upon its adoption.

COMPLAINANT RESTS

[fol. 60] Respondents' Evidence

R. P. McREE, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Madison:

Q. Is this Mr. R. P. McRee?
A. It is.
Q. What is your position with the Alcoholic Beverage Control Board of Alabama?
A. Administrator for the Alcoholic Beverage Control Board.
Q. Is the Alabama Alcoholic Beverage Control Board also known as the ABC Board?
A. Yes, sir.
Q. Where does it have its office?
A. Montgomery, Alabama.
Q. How long have you been employed as such?
A. How long have I been employed as administrator?
Q. Yes.
A. November 1st, 1948.
Q. What are your duties in connection with the administration of the business of the Alabama Alcoholic Beverage Control Board?
A. Administrator of all the activities as prescribed by the Board.

Q. I will ask you whether or not there have been any rules or regulations proposed or established interpreting or implimenting what is known as the Solomon Bill, which has been introduced in evidence in this case, by the Board?

A. There has not.

Q. Have you issued, or the Board issued, any directives or instructions to your supervisors or store managers, or other employees of the ABC Board, in regard to the administration of the Solomon Act?

A. We have not.

Q. Have you, or has the Board, either or both, adopted any specific policies concerning the Solomon Bill, other than a general regulation of the Board's duties to enforce the [fol. 61] laws which may be delegated to it?

A. We have not.

Mr. Cooper: We object. I am not just sure what he means by that question.

The Court: I will let him testify to what has occurred.

By Mr. Madison:

Q. State to his Honor what has been done with reference to the Solomon Act.

A. We received a telegram from, I believe it was—I don't remember his name—the President of the Union in Birmingham. And I answered that telegram by a letter, and quoted the telegram, and said the Board would enforce the Solomon Act the same as any ABC Act or any pertinent laws.

Q. Since the passage of the Act is that all that the Board has done with reference to the Solomon Act pertaining to the complaining union?

A. It is.

Q. Have you, or has the Board to your knowledge, made any investigation of complainant to determine whether or not it was a labor union within the meaning of the Solomon Act; have you conducted an investigation?

A. We have not.

Q. Have you, or any of your employees so far as you know, contacted any of the officers of complainant union

with respect to determining whether it was a labor union, or not, within the meaning of the Solomon Act?

A. I have not, and they would not, I imagine.

Mr. Cooper: We object to what he imagines.

By Mr. Madison:

Q. Tell the Court what your duties are with reference to employees and how the personnel of the Board is employed.

A. In their rules and regulations the Board delegated authority to the administrator to employ the personnel for the various positions in the ABC Board, and fix their salaries, and assign their duties, and dismiss them in accordance with the rules promulgated by the Personnel Board.

[fol. 62] Q. Who besides you has the right to discharge or dismiss an employee of the ABC Board?

A. No one.

Q. Do you know what rights, if any, a discharged employee has?

A. He has the right for an appeal to the Personnel Board within a certain period of time. I think it is from ten to thirty days after he is dismissed he must file his appeal with the Personnel Board.

Q. Do you make up what I call a pay roll? If I say the wrong thing, correct me. Do you make up what is called a payroll for the employees of the ABC Board?

A. We do.

Q. Do you certify that to someone in the State Department?

A. I certify that to the Comptroller. And it must be certified and approved by the Director of Personnel before that can be paid.

Q. Have you failed to certify anyone being entitled to his pay working for the ABC Board?

A. I have not.

Q. As being not entitled to his pay because of the passage of the Solomon Bill?

A. I have not.

Q. And if there is any employee of the ABC Board today who is a member of complainant union, insofar as you know he has received his pay?

A. That is correct.

Q. I believe you stated you didn't have the official authority to dismiss, you could dismiss, but it is subject to review of the merit board?

A. That is right. They have to appeal that dismissal.

Q. Have you given any instructions or directives to the supervisors or store managers directing the dismissal, or that dismissal proceedings be instituted, against any employee because of his membership in complainant union?

A. I have not. I might qualify that just a little. The supervisors or store managers don't have the authority to dismiss.

Q. In other words, if that action was taken it would be by you?

A. That is correct.

[fol. 63] Cross-examination.

By Mr. Cooper:

Q. Where do you live?

A. Montgomery, Alabama.

Q. Is this your official voting residence?

A. No, sir.

Q. Where is that?

A. Decatur, Alabama.

Q. How long have you been in your official capacity with the Board?

A. As administrator I have been with them since November 1st, 1948.

Q. You were in your present capacity at the time the Solomon Bill became law, were you?

A. I was.

Q. Were you present in the United States District Court in Birmingham on the day that proceedings were had there that have been referred to today?

A. I was.

Q. Did you indicate to the Court, replying to my inquiry then, it was your opinion the Act didn't apply to the complaining organization?

A. Will you repeat that?

Q. Did you make any indication to the Federal District

Court in the course of those proceedings that the Solomon Act didn't apply to the plaintiff organization there?

(Objected to. Objection overruled.)

A. I don't remember that I did.

Q. Were you a party to a commitment that was made to the Court? Were you one of the individuals that agreed to that commitment to the Court?

A. I was.

Q. What did you tell the Federal Judge or your attorneys?

A. Are you talking about the time it was before Judge Lynne?

Q. Yes.

A. Yes, it was. Yes, we made a commitment at that time we wouldn't take any action pending the time it could be heard by the Court.

Q. Not take any kind of action?

A. Against Mr. Hatcher, who was the plaintiff in that case.

[fol. 64] Q. Did you tell the Court the Act didn't apply to Mr. Hatcher or to the complaining organization?

A. No; I didn't. I made the statement we would take no action against Mr. Hatcher pending the trial before a three men Court.

Mr. Madison: It is my understanding that you filed a bill for an injunction to restrain somebody from being fired, and during the pendency of that suit the Board would not fire anybody.

Mr. Cooper: We were asking for temporary relief, and the Court asked the parties would they agree as Mr. McRee testified.

The Court: All right.

By Mr. Cooper:

Q. Are you prepared to state your opinion to this Court today whether this organization is, or not, a labor union within the meaning of the Act?

Mr. Madison: We object.

The Court: I will let him state his interpretation. This is Cross-examination.

(Exception noted for the Respondents by direction of the Court.)

The Witness: I will say this, that the way the bill is written the CIO employees would be in violation of the Solomon Act.

By Mr. Cooper:

Q. When did you first learn of the Solomon Bill?

A. I believe that it was by newspaper article, or by a letter sent out by Mr. Hagler on February 16, 1953.

Q. Was that prior to the time the Act was passed?

A. It was prior to the time the Legislature came in session in May.

Q. When the Legislature met and passed the law how did you become officially apprized of its passage?

A. When I had appeared as a witness before a committee.

Q. Was that before the Act was passed?

A. It was.

Q. You testified, did you, before one of the legislative committees?

[fol. 65] A. One of the committees. I forget which one it was.

Q. After the Legislature acted and the Act became law, the bill became law, how did you officially get notice that law was on the books?

A. I think I had a copy of the bill mailed to me. We receive copies of them from the Secretary of State.

Q. It was a transmittal of it with a letter?

A. It wasn't a transmittal. I am advised of every bill like that from department heads that is passed.

Q. Were you the first official of the Board that got the bill, did it come to you?

A. It came to me as administrator of the Board.

Q. What did you do then, did you disseminate that information to any member of the Board, call a meeting, or what?

A. It was discussed when meeting. We have regular meetings each Wednesday. And it was discussed at our meetings. And I believe the first time it was ever dis-

cussed was when we received a wire from Mr. Cockrell that was dated September 30th.

Q. When did that bill become law?

A. I don't know. I think I have a copy of it. September 17th, 1953.

Q. You received a copy of it, I presume, on about that date, or shortly thereafter?

A. I imagine it would be within ten days. I don't know how quick the printer gets them out.

Q. Have you any communications in writing between you and the Board with reference to that bill that took place after you received it?

A. No, sir.

Q. All discussed orally?

A. In the open meetings of the ABC Board.

Q. Do you recall the first open meeting which you discussed the passage of that bill?

A. I could tell you by seeing a calendar for 1953.

Q. In your best judgment.

A. The Wednesday nearest October the 7th.

Q. Are any minutes kept of those meetings?

A. Yes. I don't know whether there is any record on the minutes, or not.

[fol. 66] Q. Have you the minutes with you?

A. No.

Q. Have you a copy of the minutes of the Board?

A. Yes, sir.

Q. It was after that meeting that you replied to Mr. Cockrell?

A. Yes, sir.

Q. I believe you testified awhile ago you had known he was some Local Union officer.

A. Yes, sir.

Q. Or local official of the organization.

A. I did.

Q. Have you the communication you received from Mr. Cockrell?

A. I don't think I have that in this file. It is probably in my file upstairs. I will check it.

Q. Was it in a wire?

A. Yes, sir, it was a telegram. I think it is in our files upstairs. This is mostly a file of what happened prior to

the passage of the Solomon Bill. I thought you were going into that is the reason I brought it up.

Q. Your letter sets out an interpretation of that law.

A. It sets out this interpretation, yes.

Q. Do you have the letter of instructions that went out with the copies of the Bill circulated in your stores for signing?

A. I have.

Q. May I have that, please?

A. (Indicating.)

Q. That was dated September 18th, 1953, wasn't it?

A. Yes, sir.

Q. The Bill was dated——

A. September 17th.

Q. Evidently you acted on the Bill right away.

A. Evidently I did.

Q. You took some step before the Board ever met?

A. Probably did.

Q. You stated the Board met on the Wednesday nearest October 7th.

A. No, sir. I said I discussed that with the Board the [fol. 67] nearest Wednesday that we replied to that telegram.

Q. You had other discussions of the Solomon Act with the Board?

A. I don't know that I did. The administrator is authorized to act for the Board when the Board isn't in session.

Mr. Cooper: We want to introduce this as a Complainant's Exhibit.

(Marked "Complainant's Exhibit 3, 3/31/1954, WHL.")

By Mr. Cooper:

Q. That document you identified, which is marked Complainant's Exhibit 3, was mailed out on the date it bears?

A. Yes, sir.

Q. September 18th.

A. It was either mailed that day or the next day. That is the date when I wrote the letter.

Q. Had you had any meeting before you sent this out on

or abc t September 18th, this Complainant's Exhibit 3, had you had any meetings to discuss with the Board about the Solomon Act?

A. No, sir, no meeting of the Board to discuss the Solomon Act.

Q. You made that decision yourself?

A. I did.

Q. Did you receive copies back signed by the various employees?

A. We did.

Q. Do you know of any other legislation you sent out about this time for them to initial and send back?

A. No. I sent out different instructions pertaining to the operation of stores where we wanted to know they are all acquainted with specific instructions.

Q. Where you wanted to be sure employees were acquainted with the Solomon Bill you sent out the form marked Complainant's Exhibit 3?

A. That is right.

Q. What are Mr. Windsor's duties?

A. He is supervisor for the Northern District, which is the stores in Jefferson County, Madison County, Morgan County, and Tuscaloosa County.

Q. Does he perform any supervisory duties with respect to store employees under him?

[fol. 68] A. He does.

WILLIAM K. THAMES, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Williams:

Q. Your name is William K. Thames?

A. Yes, sir.

Q. You are Chairman of the Alcoholic Beverage Control Board of Alabama.

A. Right.

Q. Where are the offices of the Board?

A. Lee Street, Montgomery.

Q. Where is your residence?

A. Montgomery.

Q. Who are the other members of the Board?

A. Mr. Maury McWilliams and James T. Thrower. McWilliams is from Prattville, and Mr. Thrower from Dothan.

Q. Is it the position of the Alabama Alcoholic Beverage Control Board that the provisions of the Solomon Act apply to the Alcoholic Beverage Control Board?

A. Yes, sir.

Q. Who is administrator of the Alcoholic Beverage Control Board?

A. R. P. McRee.

Q. You are familiar with the Act No. 720 of the Legislature of 1953 known as the Solomon Bill?

A. Yes, sir.

Q. Has your Board made any rule or regulation in connection with carrying out the provisions of this Bill since its passage?

A. No, sir.

Q. Have you issued any directives or instructions to your supervisors, your store managers, or any other employees in regard to the Solomon Bill?

A. No, sir.

Q. Have you had any specific violations in connection with it?

Mr. Cooper: That is objected to. We got pretty clearly [fol. 69] from Mr. McRee they did not. What Mr. Thames can add to that, whether this is a type of violation now is a conclusion.

The Court: He can tell what they did.

By Mr. Williams:

Q. Have you done anything with reference to the Solomon Act?

A. No.

Q. Do you know whether or not Mr. McRee is empowered to employ the personnel of the Alcoholic Beverage Control Board?

A. Yes, sir.

Q. Does he have the power to increase salaries or dismiss employees from the service?

A. Yes, under the condition they have the right to protest

under the personnel act. They have a time where they can appeal it.

Q. Appeal to the Personnel Board?

A. Yes, sir.

By the Court:

Q. Aren't all these employees under the merit system?

A. Yes.

By Mr. Williams:

Q. Does any employee of the Alabama Alcoholic Beverage Control Board have the authority to dismiss or deprive any employee of the benefits under the State Merit System?

A. No, sir.

Q. Does a supervisor have that authority?

A. No, sir.

Q. Does the Board have that authority?

A. Yes, sir. We usually delegate that to the administrator.

Q. That is under the Act of the Legislature?

A. Yes, sir.

Q. Have either you or any member of the Board, or Mr. McRee, discharged, dismissed, or threatened to discharge or dismiss, any employee of the Board, or deprive them of any benefits or rights of the merit system because of the Solomon Bill, for participation in this union or any labor union?

Mr. Cooper: We object to the leading question.

[fol. 70] The Court: Ask him if anything has been said or done.

Mr. Williams: I have asked him that and he said no. I am now asking him in a different manner.

The Witness: No.

By Mr. Williams:

Q. Do you recall a telegram from Mr. Cockrell to Mr. McRee which is an Exhibit to this Bill?

A. Yes, sir.

Q. What is your interpretation of the answer to that telegram made by Mr. McRee?

Mr. Cooper: We object.

By the Court:

Q. Do you remember the letter?
A. Yes, sir.
Q. The substance of it?
A. Not distinctly at the time. Of course, I might add this——

By Mr. Williams:

Q. Refresh your recollection.
A. We delegated that authority to the administrator.

By the Court:

Q. You had nothing to do with it?
A. With the Board, no, sir.

By Mr. Williams:

Q. Have you or any other members of the Board made any inquiries or investigations concerning any membership of the Alcoholic Beverage Control Board employees in this complainant union, check into the operating of it, or have anybody to check into it?
A. No, sir.

By the Court:

Q. Two suits have been mentioned here. I don't know about any suits. Has the Alabama Alcoholic Beverage Control Board resisted two suits filed by the Union in reference to this Act?
A. No, sir, except when we were summoned on, I think, two occasions, before Judge Lynne's Court in Birmingham, and before a three men Court after that.
[fol. 71] Q. There has been some kind of proceedings filed denying that they didn't come under the Solomon Act; isn't that so?
Mr. Williams: There is a difference of opinion about that.
The Court: You talk about these suits, but I haven't been informed about them. I don't know who was sued.

Mr. Williams: Different parties in each one of them, not exactly the same parties.

The Witness: We haven't defended any action. The only thing I remember was the first meeting we appeared in before Judge Lynne.

The Court: Who was suing who?

Mr. Cooper: It was the same plaintiff organization, with an individual member, Mr. Hatcher, who joined as plaintiff against the same respondents here today.

The Witness: Before Judge Lynne, he said before he could make a decision, or have this thing further listened to by a three men Court, would I, as Chairman of the Board, take no action against these gentlemen at that time, which I told him I would.

Mr. Cooper: When the suit was before the State Court the party defendants were at that time the same. And before three judges——

Mr. Madison: We filed before the Circuit Court in Birmingham.

The Court: Who were the respondents in that case in the State Court?

Mr. Cooper: The same parties.

Mr. Madison: Almost word for word like this suit.

The Court: At that time you took the position this law applied, the Solomon Act applied to the employees?

Mr. Madison: We filed a plea in abatement because they had at the same time a suit in the Federal Court.

The Court: It has been raised in two Courts?

Mr. Williams: Yes, sir, and never decided on the merits.

[fol. 72] The Court: I just wanted to know whether there was any justiciable controversy.

Mr. Cooper: We are the only two people who know what that prior litigation is. This gentleman has been there every time.

The Witness: I only appeared there twice. I wasn't present at the last time.

Cross-examination.

By Mr. Cooper:

Q. You were present when the application was heard for a temporary injunction in Judge Lynne's Court, were you not?

A. Right.

Q. And you were one of the respondents who had a consultation with your counsel, and after such consultation, in reply to an inquiry from the Court, told the Court you would take no steps to apply to Mr. Hatcher or the plaintiff on the verdict he was going to give.

A. That is correct.

Q. You didn't tell them at that time what reason the Act didn't apply.

A. I didn't make any comment.

Q. Neither did your counsel tell the Court the Act didn't apply? As a matter of fact, when that wrangle occurred there your counsel stated he couldn't suggest making a commitment you wouldn't enforce the Act, and he wanted to have a consultation with you gentlemen, you all went into a huddle and came back and said you wouldn't enforce the Act.

A. I made that statement when Judge Lynne asked me to.

Q. And then you said that Mr. McRee was delegated considerable authority to act by the Board, but you would assume that under your own responsibility.

A. Yes, sir. Judge Lynne asked me to assume that until we could have a hearing before three judges.

Q. Mr. McRee has considerable authority from the Board as you have given him under the Act.

A. Yes, sir.

Q. At the time he set up this bulletin to all ABC store managers in Alabama, which is complainant's Exhibit 3 in evidence, he had authority to do so, you never changed [fol. 73] this, the Board never changed this in any way.

A. No, sir.

Q. Have you any other copies of legislative bulletins to your employees that you sent out for the purpose of informing the Board they have read those by initialing them in the recent past?

A. Not to my knowledge.

Q. This Personnel Board you have mentioned isn't, as I recall—it doesn't apply to unincorporated associations or groups, does it; it applies to individual employees, doesn't it?

A. I think—I am going on my own theory—I couldn't answer that because I don't know.

Q. It is all in the statute as I recall it.

A. Yes, sir.

Q. It is a matter of law.

A. Yes.

Q. I believe you have been represented by special counsel in some of these proceedings of the Board?

A. No, sir.

Q. Has the Board any counsel?

A. Yes, sir. Mr. Williams is the Board's attorney.

Q. Mr. McQueen.

A. He appeared along with Mr. Nachman.

Q. He is also in the Attorney General's office?

A. He is not right now. He was Assistant Attorney General.

Q. Have you consulted with any of these gentlemen as to whether or not the Solomon Act applies to employees of an organization?

(Objected to. Objection overruled. Exception noted for the respondents by direction of the Court.)

Q. Have you consulted any of these gentlemen, either of the counsel, or the Attorney General's office, or members of the Board, as to whether or not the Solomon Act applies to the organization described here in the Bill of Complaint?

A. No, sir.

Q. You never mentioned it?

A. I couldn't say I never mentioned it. When we were up on the case we probably discussed it pro and con. We [fol. 74] rode together up there and back. I couldn't say exactly what was said. I know I haven't taken any action as Chairman of the Board since I gave Judge Lynne my promise I wouldn't take any action.

Redirect examination.

By Mr. Williams:

Q. Have you any other information as to whether or not this organization is a union or not a union other than what is stated in this complaint?

(Objected to. Objection overruled.)

A. No, sir.

Recross-examination.

By Mr. Cooper:

Q. Do you agree or disagree with Mr. McRee this organization and these people would be in violation of the Solomon Act?

(Objected to. Objection overruled. Exception noted for the respondents by direction of the Court.)

A. I believe I would agree with Mr. McRee.

Respondents rest.

Testimony closed.

COMPLAINANT'S EXHIBIT 3

To: All ABC Store Managers.
From: R. P. McRee, Administrator.
Subject: Legislative Act No. 720.

We are attaching two (2) copies of the Legislative Act referred to above. You are to have each employee of the store read carefully, and sign one copy, then return it to the Central Office. The other copy is to be placed on your bulletin board.

[fols. 75-77] (S.) R P. McRee, Administrator.

September 18, 1953, No. 106 (1953).

SOLOMON ACT

Omitted. Printed side page 11, supra.

[fols. 78-83] IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA, IN EQUITY

No. 26815

GOVERNMENT & CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an Unincorporated Association, Complainant,

vs.

S. F. WINDSOR; FELIX L. PARSONS; J. T. THROWER; WILLIAM K. THAMES; MAURY A. McWILLIAMS; and R. P. McREE, Respondents

FINAL DECREE—April 12, 1954

This cause coming on to be heard was regularly set for hearing, heard and submitted; and said submission having been considered by the Court, it is hereby declared by the Court as follows:

(1) The Court has jurisdiction of the parties and the subject matter. A justiciable controversy exists as to whether complainant, its activities and members, all as described in the bill of complaint, are subject to the provisions of the Statute of Alabama, HB 231, commonly known as the "Solomon Bill."

(2) Said Statute of Alabama applies to complainant, its activities and its members all as described in the complaint.

The prayer for injunctive relief is denied.

Each party to this action excepts, separately and severally, to each and every part of this decree which is adverse to him or it.

Costs are hereby taxed against complainant, for which execution may issue.

This the 12 day of April, 1954.

(S.) Eugene W. Carter, Circuit Judge in Equity Sitting.

[File endorsement omitted.]

[fols. 84-88] CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA, IN EQUITY

[Title omitted]

NOTICE OF CROSS-APPEAL BY RESPONDENTS FROM RULING ON DEMURRERS—Filed April 20, 1954

Now comes the respondents, S. F. Windsor, Felix L. Parsons, J. T. Thrower, William K. Thames, Maury A. McWilliams, and R. P. McRee, and file this their cross-appeal to the Supreme Court of Alabama from the judgment and decree of the Circuit Court of Montgomery County, Alabama, overruling respondents' demurrer to complainant's bill of complaint, which said judgment or decree was rendered in said cause on the 31st day of March, 1954. Respondents elect not to give bond or security for costs.

(S.) Si Garrett, Attorney General, (S.) Gordon Madison, Assistant Attorney General, (S.) Jesse M. Williams, Montgomery, Alabama, Attorneys for Respondents.

[File endorsement omitted.]

[fol. 89] Register's Certificate to foregoing transcript omitted in printing.

[fol. 90] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. 423

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an Unincorporated Association, *et al.*, Appellants,

vs.

S. F. WINDSOR, *et al.*

Appeal from the United States District Court for the Northern District of Alabama.

ORDER NOTING PROBABLE JURISDICTION—November 13, 1956

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Black took no part in the consideration or decision of this question.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 423

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, AN UNINCORPORATED ASSOCIATION; E. J. HABSHEY,

Plaintiffs-Appellants,

vs.

S. F. WINDSOR, HARRELL HAMMONDS, KNOX McRAE, CLARENCE V. EVANS, AND MELVIN DAWKINS,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

STATEMENT AS TO JURISDICTION.

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Statutes and Other Authorities Cited.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No.....

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, AN UNINCORPORATED ASSOCIATION; E. J. HABSHEY,

Plaintiffs-Appellants,

vs.

S. F. WINDSOR, HARRELL HAMMONDS, KNOX McRAE, CLARENCE V. EVANS, AND MELVIN DAWKINS,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

STATEMENT AS TO JURISDICTION.

In compliance with Paragraph 2 of Rule 13 and with Rule 15 of the Rules of the Supreme Court of the United States, as amended, Appellants (plaintiffs below) submit herewith their statement particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment of the District Court entered in this cause.

OPINION BELOW.

The opinion of the United States District Court for the Northern District of Alabama, Southern Division, was delivered February 17, 1956, but has not been reported in the official reports. Copies of the opinion and of the judgment of the District Court entered the same day are attached hereto as Appendix A.

The earlier opinion of the District Court (reported at 116 F. Supp. 354 (N. D. Ala., 1953)) and the judgment pursuant thereto were entered November 9, 1953. Copies of the earlier opinion and judgment are attached hereto as Appendix B. Said prior judgment was affirmed by the Supreme Court of the United States per curiam on February 1, 1954, 347 U. S. 901 (1954).

The State court decisions to which the District Court's February 17, 1956 opinion (Appendix A) refers were rendered in the Circuit Court of Montgomery County, Alabama, on April 12, 1954 (a copy of the Circuit Court decision is attached hereto as Appendix C) and in the Supreme Court of Alabama on March 10, 1955 (a copy of the Alabama Supreme Court opinion is attached hereto as Appendix D). The opinion of the Alabama Supreme Court is reported in 262 Ala. 785, 78 S. 2d 646 (1955).

JURISDICTION.

Appellants sought an injunction against enforcement of a statute of the State of Alabama (Acts of Alabama (1953) page 974, hereinafter called "Solomon Act" or "Act," the text of which statute is attached hereto as Appendix E) claiming that the statute violated the Fourteenth Amendment of the Constitution of the United States. The action was brought pursuant to Sections 1331, 1343 and 2201 of Title 28, United States Code and was heard and

determined by a District Court of three judges, as provided for in Sections 2281 and 2284 of Title 28 of the United States Code. The judgment of the District Court denying relief and dismissing appellants' action with prejudice was entered February 17, 1956. Notice of appeal was filed in the United States District Court for the Northern District of Alabama, Southern Division, March 21, 1956. Time for docketing this case was enlarged by orders of said District Court entered May 18, 1956 and August 17, 1956 so as to permit docketing on or before September 16, 1956. Said orders enlarging time for docketing are on file with the Clerk of this court. The jurisdiction of the United States Supreme Court to review this decision by direct appeal is conferred by Section 1253 of Title 28 of the United States Code.

The full text of the Solomon Act (Acts of Alabama (1953) p. 974) is set forth in Appendix E. The most pertinent provisions are as follows:

> Section 1. As used in this act the term "labor union or labor organization" means any organization of any kind, in which employees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and the term "public employee" means any person whose compensation is derived in whole or in part from the State, or any agency, board, bureau, commission on institution thereof.
>
> Section 2. Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment.

Section 3. This act shall not apply to persons employed as teachers by any county or city board of education or trade schools or institutions of higher learning, nor shall it apply to those employees of the State Docks Board referred to in Title 38, Section 17, of the Code of Alabama, 1940, nor shall it apply to employees of cities or counties.

QUESTIONS PRESENTED.

1. Can a State, consistently with the Fourteenth Amendment, exclude a government employee, working as a clerk in a state operated liquor store, from further public employment solely because of membership or participation in a labor union?

2. Can a state, consistently with the Fourteenth Amendment, establish as a condition of continued employment by the state, resignation from membership in a labor organization because that organization has, as one of its ultimate purposes, the improvement of wages through collective bargaining when, but only when, such bargaining is permitted by the state?

3. Can a state, consistently with the Fourteenth Amendment, prohibit state employees of a retail liquor store from exercising their rights of voluntary association, mutual assembly, consultation, discussion and free speech because those rights are exercised through membership or participation in a voluntary association which also has, as one of its purposes, collective bargaining if legitimate, with one or more employers?

4. If a state can constitutionally prohibit its employees from joining any labor union, can it, consistently with the Fourteenth Amendment, limit such prohibition to employees who are neither teachers, nor employed by those agencies of the state in which the employees are already fully organized into labor unions, nor employed by cities or counties?

5. Does the Solomon Act violate the Fourteenth

Amendment on its face and as applied to plaintiffs and to the members of plaintiff Government and Civic Employees Organizing Committee, CIO (hereinafter called "plaintiff Union")?

STATEMENT OF THE CASE.

Plaintiff Habshey is a clerk in a retail liquor store operated by the Alabama Alcoholic Beverage Control Board and is a member of plaintiff Union. Under the Solomon Act he is threatened with discharge and with forfeiture of all employment rights, benefits and privileges because, and solely because, he intends to remain a member of plaintiff Union.

Plaintiff Union is a labor organization engaged in organizing and recruiting members among the civilian employees employed by governmental and civic agencies.* Plaintiff Union's purpose is to improve the conditions of employment for and the quality of service rendered by such employees. Among the members of plaintiff Union are persons, such as plaintiff Habshey, who are employed by agencies of the State of Alabama. The passage and threatened enforcement of the Solomon Act in 1953 caused many members to resign from plaintiff Union and many potential members to refrain from joining. The Union and Habshey, one of its remaining members, thereupon brought this suit to restrain enforcement of the Act.

In the original opinion of the three-judge District Court,

* In July, 1956, in consequence of the merger of the American Federation of Labor and the Congress of Industrial Organizations, plaintiff Union took action to merge with its AFL-affiliated counterpart into the American Federation of State, County and Municipal Employees, affiliated with the American Federation of Labor and Congress of Industrial Organizations. Under the merger agreement every member of plaintiff Union, including plaintiff Habshey, automatically continues as a member of the merged union and all the provisions of plaintiff Union's Rules relevant to this cause remain applicable to such members.

116 F. Supp. 354, 359 (N. D. Ala., 1953) and its judgment order of November 9, 1953, which was affirmed by this Court, 347 U. S. 901 (1954), the District Court withheld the exercise of jurisdiction but retained the cause "for a reasonable time to permit the exhaustion of such State administrative and judicial remedies as may be available". On February 19, 1954, plaintiff Union filed an equity action in the Circuit Court of Montgomery County, Alabama, praying for an injunction against the enforcement of the Solomon Act against plaintiff Union or its members and further praying for a declaratory judgment determining that plaintiff Union was not "a labor union or labor organization" within the Solomon Act and that the Act had no application to plaintiff Union or its members.

In the bill of complaint in the state court, set forth in the record herein at pages 2-9 of Plaintiffs' Exhibit 1, plaintiff Union alleged that one of the objects in its Rules of organization was:

> "Second. To increase the wages and improve the conditions of employment of our members by legislation, negotiation or other legitimate means."

When plaintiff Union had asked defendants to negotiate, defendants had denied that plaintiff Union could legitimately deal with defendants under Alabama law and had refused to engage in negotiations as to Alcoholic Beverage Control Board employees. In accordance with its governing rules, plaintiff Union had accepted such refusal and thereafter had, without negotiation, sought to assist its members in individual employment problems, and to consult with its members privately and in Union meetings as to common problems involving working conditions and as to public affairs, economic and political issues, State and Federal political candidates, rights under Federal legislation (such as the Social Security Act) and the possi-

bility of extending such rights to members and others, matters of Federal and State taxation, and eligibility for the right of franchise under State and Federal laws.

On April 12, 1954 the Circuit Court of Montgomery County, Alabama, denied plaintiff Union's prayer for injunctive relief, declaring:

> "Said statute of Alabama (Solomon Act) applies to complainant, its activities and its members all as described in the complaint."

On appeal, the Alabama Supreme Court affirmed the Circuit Court decree March 10, 1955, on the ground that the Union was a "labor union" subject to the Solomon Act, irrespective of its actions, because one of its governing objects remained the improvement of working conditions "by legislation, negotiation or other lawful means."

On February 15, 1956, the instant case was resubmitted to the three-judge District Court for final decree. On February 17, 1956, the three-judge Court entered the judgment here appealed from, ruling "that the Alabama courts have not construed the Solomon Bill in such a manner as to render it unconstitutional" and dismissing plaintiffs' action with prejudice.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

This appeal presents constitutional questions of serious import, clearly requiring plenary consideration, with briefs on the merits and oral argument, for their resolution.

At the time this case was last before the United States Supreme Court, troublesome questions were presented for determination preliminary to the constitutional issues. The three-judge Court had been of the view that the Solomon Act could be construed by the state courts to meet the challenge of unconstitutionality. Accordingly, it had refused injunctive relief but had retained jurisdiction. This Court affirmed.

Plaintiff Union then instituted an action in the state courts for injunctive and declaratory relief so that an authoritative construction of the Act, as applied to plaintiff Union, could be obtained. The Alabama Supreme Court construed the Act as applicable to any organization which has, as one of its ultimate objectives, the achievement of a collective bargaining relationship with any employer—even though the organization abides by existing law forbidding such bargaining with the state and contents itself, as did plaintiff Union, with other activities of a "legitimate" nature so long as collective bargaining with the state remained forbidden. Now the question is squarely presented as to whether a state may constitutionally prohibit its employees from joining or remaining members of an organization such as plaintiff Union.

The District Court, in its first decision, concluded that the settlement of wages and other conditions of employment for state employees was a proper subject for state legislative or executive action and not for collective bargaining; that the state could constitutionally, therefore, prohibit its employees from being members of an organization for the purpose of engaging in collective bargaining; and that the question of whether the Solomon Act was so limited should be decided by the state courts.

The state courts have now decided that the statute is not so limited. Whether or not a union presently insists on collective bargaining with the State, and whether or not it accepts the denial of such bargaining under present law and limits itself to lawful activities and efforts to change the law, the state courts have declared that it falls within the statutory ban if one of its ultimate purposes, as expressed in its governing Rules, is to achieve collective bargaining with one or more employers, even—as here—by "legitimate means".

This case confronts the Supreme Court with a new kind

of attempt by a State to impose conditions on public employment which cut across constitutional rights of the employees involved. Heretofore this Court has resolved conflicts between claimed State interests and individual rights in such cases as:

Slochower v. *Board of Higher Education*, 350 U. S. 551, 100 L. Ed. 449, 76 S. Ct. 637 (1956).

Wieman v. *Updegraff*, 344 U. S. 183, 97 L. Ed. 216, 73 S. Ct. 215 (1952).

Adler v. *Board of Education*, 342 U. S. 485, 96 L. Ed. 517, 72 S. Ct. 380 (1952).

Garner v. *Board of Education*, 341 U. S. 716, 95 L. Ed. 1317, 71 S. Ct. 909 (1951).

Here, however, for the first time the condition sought to be imposed by the State is directed solely against membership in a labor union; mere membership, without more, causes the absolute forfeiture of the employment rights of the government employee if one of the union's ultimate objects is collective bargaining with any employer.

To enforce the Solomon Act, as so construed, and to uphold the patently arbitrary condition it imposes on public employment, would be to run counter to the requirements of due process as made clear in *Wieman* v. *Updegraff*, 344 U. S. 183, 191-92, 97 L. Ed. 216, 222, 73 S. Ct. 215 (1952):

> "For in United Public Workers, though we held that the Federal Government through the Hatch Act could properly bar its employees from certain types of political activity thought inimical to the interests of the Civil Service, we cast this holding into perspective by emphasizing that Congress could not 'enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal employee shall attend Mass, or take any active part in missionary work.' 330 U. S. at 100. See also *In Re Summers*, 325 U. S. 561, 571 (1945). We need not

pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory."

Even in dealing with the sensitive questions of loyalty, a State must of course conform to the requirements of due process. As this Court stated at its last term in *Slochower* v. *Board of Higher Education,* 350 U. S. 551, 555, 100 L. Ed. 449, 453, 76 S. Ct. 637, 639-40 (1956):

"The problem of balancing the State's interest in the loyalty of those in its service with the traditional safeguards of individual rights is a continuing one. To state that a person does not have a constitutional right to government employment is only to say that he must comply with reasonable, lawful and nondiscriminatory terms laid down by the proper authorities."

Here no problem of protecting the State against disloyalty of a public servant exists. Rather, the activities which the State of Alabama is seeking to restrict are themselves constitutionally protected:

"Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm. . . . And the right either of the workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others." *Thomas* v. *Collins,* 323 U. S. 516, 539, 89 L. Ed. 430, 445, 65 S. Ct. 315, 327 (1945).

By infringing those rights the State of Alabama has violated the Fourteenth Amendment.

The arbitrariness of the statutory classification established by the Solomon Act is manifest. No relationship between simple membership in a labor union and unsuit-

ableness for public employment has been, or constitutionally could be, established. No attempt has been made to restrict only activities reasonably found by the legislature to have a potential for evil:

> "The heavy hand of the statute falls alike on all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive." *Slochower* v. *Board of Higher Education,* 350 U. S. 551, 558, 100 L. Ed. 449, 455, 76 S. Ct. 637, 641 (1956).

Moreover, the very exclusions made by the Solomon Act further violate the Fourteenth Amendment by their arbitrary character. In *Adler* v. *Board of Education,* 342 U. S. 485, 493, 96 L. Ed. 517, 524, 72 S. Ct. 380, 385 (1952), this Court said, in upholding a state statute limited to the field of education:

> "A teacher works in a sensitive area in a school room. There he shapes the attitude of young minds towards the society in which they live. In this the state has a vital concern."

Yet the Alabama legislature has made the Solomon Act provisions specifically inapplicable to teachers (Section 3, Appendix E). Whatever the unarticulated and unknown "evil" of union membership may be, it apparently does not extend to the teacher who "works in a sensitive area in a schoolroom." Nor does the Act apply to employees of cities, counties or the State Docks Board (in which latter agency unions affiliated with the railroad brotherhoods had already organized the employees and negotiated wage schedules and working conditions when the Act was passed; Plaintiff's Exhibit 12). In sum, the limitations imposed on the Act by the legislature violate the equal protection clause of the Fourteenth Amendment just as the basic classification made by the Act denies both equal protection and due process.

In recent terms this Court has often been called upon to mark out the area of constitutional protection of govern-

ment employees. Here a state legislature has sought to erode that area by prohibiting state employment to every member of a labor union, and the state courts have defined "labor unions" to include any organization one of whose ultimate purposes is the achievement of collective bargaining, even though the organization proposes only to use lawful means to that end, accepts existing restrictions against such bargaining with the state, and confines its activities to other areas of employee interest and advancement where collective bargaining is forbidden.

We think it clear that a state could not, consistently with the Constitution of the United States, forbid its employees from believing in the principal of collective bargaining. We think it equally clear that a state cannot constitutionally prohibit its employees, upon pain of dismissal, from joining an organization because that organization believes in collective bargaining.

We submit that the District Court failed to recognize that such an Act, with such a judicial construction, violates the Fourteenth Amendment. We believe that the constitutional questions presented by this appeal are substantial and of public importance.

Respectfully submitted,

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APPENDIX A.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Alabama,
Southern Division.

Civil Action, No. 7466

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an unincorporated association; E. J. HABSHEY,
Plaintiffs,
versus
S. F. WINDSOR, HARRELL HAMMONDS, KNOX MCRAE, CLARENCE V. EVANS, and MELVIN DAWKINS,
Defendants.

Before Rives, Circuit Judge,
Lynne and Grooms, District Judges.

Per Curiam:

OPINION.

The Alabama statute involved and the nature of this litigation have been fully stated in our earlier opinion in this case reported in 116 F. Supp. 354.[1] In conformity

1. In part saying:
"The Solomon Bill concerns an important area of State administration and proclaims a broad legislative policy as to such administration. As to employees working for the State,

with that opinion, this Court on November 9, 1953, entered its judgment,

> "that the final relief for which plaintiffs prayed in their complaint be and the same is hereby denied; provided, however, that the above-styled action is not hereby dismissed, but is retained and will remain pending for a reasonable time to permit the exhaustion of such State administrative and judicial remedies as may be available; thereafter, such further proceedings will be had herein as may then appear to be lawful and proper."

On appeal on the 1st day of February, 1954, the Supreme Court of the United States entered its judgment granting a motion to affirm and ordering and adjudging "that the judgment of the District Court in this cause be, and it is hereby, affirmed with costs." See 347 U. S. 901.

Thereafter on the 19th day of February, 1954, the plaintiff association filed in the Circuit Court of Montgomery County, Alabama in Equity, its bill of complaint praying for an injunction and a declaratory judgment determining the status of said association, under said Alabama statute. The said State Circuit Court on the 12th day of April, 1954 entered its final decree in said cause, by which it declared in pertinent part that, "Said Statute of Alabama applies to complainant, its activities and its mem-

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there can hardly be any dispute that the settlement of grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work are matters for the State government to be performed through its legislative and executive departments, and are not matters for collective bargaining to be participated in by a labor union or labor organization. Section 1 of the Act defines 'labor union or labor organization,' and, as so defined, the Act could well be construed by the state courts simply as prohibiting a public employee from being a member of or participating in such an organization for the purpose of collective bargaining with the State, and, as so construed, meet the challenge of unconstitutionality." *Government and Civic Employees Organ. Com.* v. *Windsor*, 116 F. Supp. 354, 357.

bers all as described in the complaint. The prayer for injunctive relief is denied."

On appeal, that final decree was affirmed by the Supreme Court of Alabama on the 10th day of March, 1955, pursuant to an opinion reported in 262 Ala. 785, 78 So. 2d 646.

The case is again submitted to this Court for final decree upon the pleadings, affidavits, and testimony taken orally upon the earlier hearing.

Admittedly, the case has now remained pending, in accordance with the earlier judgment, "for a reasonable time to permit the exhaustion of such State, administrative and judicial remedies as may be available." As indicated, we have heretofore decided that the Solomon Bill can be so construed as to meet the challenge of unconstitutionality, and our said decision has been affirmed by the Supreme Court of the United States. After a thorough reading and consideration of the final decree of the Circuit Court of Montgomery County in Equity and of the opinion of the Supreme Court of Alabama heretofore mentioned, it is clear to us that the Alabama courts have not construed the Solomon Bill in such a manner as to render it unconstitutional, and, of course, we cannot assume that the State courts will ever so construe said statute. *Utah Power & Light Co.* v. *Pfost,* 286 U. S. 165, 186; *Arizona Copper Co.* v. *Hammer,* 250 U. S. 400, 430; *Pelton* v. *Commercial National Bank,* 101 U. S. 143.

Judgment is entered accordingly.

Done, this the 17th day of February, 1956.

RICHARD T. RIVES,
United States Circuit Judge,

SEYBOURN H. LYNNE,
United States District Judge,

HOBART H. GROOMS,
United States District Judge.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Alabama,
Southern Division.

Civil Action, No. 7466.

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an unincorporated association; E. J. HABSHEY,
Plaintiffs,
versus
S. F. WINDSOR, HARRELL HAMMONDS, KNOX McRAE, CLARENCE V. EVANS, and MELVIN DAWKINS,
Defendants.

JUDGMENT.

This cause coming on to be heard on the 15th day of February, 1956, before a duly constituted district court of three judges, all parties hereto stipulated in open court for submission for final decree upon the pleadings, affidavits, and testimony taken orally.

Upon review of the pleadings and proof, and the briefs of the respective parties, and in conformity with the opinion of the court contemporaneously filed herewith;

IT IS, ACCORDINGLY, ORDERED, ADJUDGED AND DECREED by the court that this action be and the same is hereby dis-

missed with prejudice, and that the costs herein be taxed against the plaintiffs.

Done, this the 17th day of February, 1956.

RICHARD T. RIVES,
United States Circuit Judge,

SEYBOURN H. LYNNE,
United States District Judge,

HOBART H. GROOMS,
United States District Judge.

APPENDIX B.

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

No. 7,466

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, AN UNINCORPORATED ASSOCIATION; E. J. HABSHEY,

Plaintiffs,

vs.

S. F. WINDSOR; FELIX L. PARSONS; J. T. THROWER; WILLIAM E. THAMES; MAURY A. McWILLIAMS; AND R. P. McREE,

Defendants.

Before RIVES, Circuit Judge; LYNNE and GROOMS, District Judges

GROOMS, *District Judge:*

OPINION.

This action is for an injunction and declaratory judgment. Jurisdiction is invoked under 28, U. S. C. A., Sections 1331, 1343, and 2201. Since the injunction sought is to restrain the enforcement, operation and execution of a statute of the State of Alabama, this Court is convened pursuant to Title 28, U. S. C. A., 2284. The statute involved is House Bill 231, known as the "Solomon Bill".[2] This statute became effective on September 18, 1953.

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[2] BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. As used in this act the term "labor union or labor organization" means any organization of any kind, in which em-

By stipulation, the case is submitted for final decree upon the pleadings, affidavits, and testimony taken orally.

This action is filed by the Government and Civic Employees Organizing Committee, CIO, an unincorporated association and E. J. Habshey, a clerk employed at Alabama Liquor Store No. 75, Birmingham. The defendants are J. T. Thrower, who is Chairman of the Alabama Alcoholic Beverage Control Board; William K. Thames and Maury A. McWilliams, members of the Board; R. F. McRee, Administrator of the Board, S. F. Windsor, District Store Supervisor of the Board in Birmingham, and Felix L. Parsons, Store Manager of Store No. 75.

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ployees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and the term "public employee" means any person whose compensation is derived in whole or in part from the State, or any agency, board, bureau, commission or institution thereof.

Section 2. Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeit all rights afforded him under the State Merit System, employment rights, reemployment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment.

Section 3. This act shall not apply to persons employed as teachers by any county or city board of education or trade schools or institutions of higher learning, nor shall it apply to those employees of the State Docks Board referred to in Title 38, Section 17, of the Code of Alabama, 1940, nor shall it apply to employees of cities or counties.

Section 4. Any public employee who prior to the passage of this act or to his public employment belonged to a labor union or labor organization and as a result thereof has acquired insurance benefits or any other financial benefits may continue to participate in such labor union or labor organization to the extent that he shall not lose any benefits thus acquired.

Section 5. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 6. All laws or parts of laws which conflict with this act are repealed.

Section 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Habshey is a member of the plaintiff union and intends to remain a member and to continue to participate in its activities. He has not acquired any insurance or other financial benefits as a result of such membership.

Several days after the passage of the Solomon Bill, defendant Parsons gave Habshey and the other employees of Store 75 a copy of the Bill. They were also shown a letter from defendant McRee requesting that they read, "understand," and initial one copy of the Bill. This copy was to be forwarded to Montgomery and another copy retained at the store. This appears to have been a routine procedure. On October 2, 1953, the union orally and by wire requested defendant McRee to advise it what enforcement steps the Board contemplated taking to enforce the Bill. McRee replied that he was directed by the Board to inform the union "that the Solomon Bill will be enforced by the Board in the same manner as the ABC Act or other pertinent laws." The following day defendant Windsor told representatives of the union that he was required to carry out any and all orders of the Board and Administrator McRee.

Habshey has been an employee of the Board for three years. His present salary is two hundred and ten dollars per month, and he has no other available means of making a livelihood. Union dues are two dollars monthly. The union has expended in excess of three thousand dollars, exclusive of interest and costs, in solicitation efforts and as organizational expense in organizing Board employees. Before the passage of the Solomon Bill, there were approximately eight hundred members of the union employed by the various agencies of the State. Included among these were two hundred employees of the Board. At this time there are about two hundred and fifty members in all State agencies. Many members of plaintiff union employed by the Board have withdrawn from membership since the passage of the Bill. The Board has never recognized the union.

No rules or regulations have been proposed or adopted interpreting or implementing the Solomon Bill. No directives or orders have been issued to supervisors, store managers, or other employees with regard to the administration of the Bill. The Board has adopted no specific policies concerning the Bill other than a general recognition of the duties to enforce all the laws of Alabama relating to the Alabama Alcoholic Beverage Control Board. Neither Habshey nor any other employee has been threatened with discharge or dismissal or deprivation of employee rights, benefits or privileges by reason of continued membership and participation in the plaintiff union. No inquiries or investigations have been made by or on behalf of the Board concerning union membership. No action has been taken by the State Personnel Board or its Director whereby any employee of the Alcoholic Beverage Control Board has been dismissed from his employment or deprived of any of his rights, benefits and privileges accorded him by reason of his public employment or deprived of any of his rights by reason of his public employment in the Merit System of Alabama, because of membership in any labor union. Habshey has enjoyed full Merit System status, and except to the extent that the Solomon Bill has affected his status, presently enjoys all the rights, benefits, and privileges accorded under the Merit System.

The "forfeiture clause" by its terms was without force until thirty days after the effective date of the Bill. This action was instituted on October 7, 1953—eleven days before the expiration of such thirty-day period. No State administrative or judicial proceedings are pending and the Bill is administratively and judicially undefined.

Plaintiffs contend that the challenged statute is self-executing and that it tends itself to no possible construction other than that of unconstitutionality under the Due Process Clause of the Fourteenth Amendment. They insist

that they do not have to wait longer before seeking relief in a federal court, because they think that "Alabama's Legislature has used unmistakably simple, clear, and mandatory language" and that "there is neither need for interpretation of the statute or any other special circumstances requiring the federal court to stay action pending proceedings in the state courts." *Toomer* v. *Witsell*, 334 U. S. 385, 392. The defendants assert among other ground that plaintiffs have not exhausted available state administrative and judicial remedies and that consequently this court, as a matter of sound, equitable discretion, should decline to exercise jurisdiction.

The Solomon Bill concerns an important area of State Administration and proclaims a broad legislative policy as to such administration. As to employees working for the State, there can hardly be any dispute that the settlement of grievances, labor disputes, wages, rates of pay, hours of employment and conditions of work are matters for the State government to be performed through its legislative and executive departments, and are not matters for collective bargaining to be participated in by a labor union or labor organization. Section 1 of the Act defines "labor union or labor organization", and, as so defined, the Act could well be construed by the state courts simply as prohibiting a public employee from being a member of or participating in such an organization for the purpose of collective bargaining with the State and, as so construed, meet the challenge of unconstitutionality.

It is the duty of this Court, as of all other federal courts, to avoid the unnecessary decision of constitutional questions. *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450. In the McAdory case, the Supreme Court said:

> ". . . In advance of an authoritative construction of a state statute, which the state court alone can make, this court cannot know whether the state court, when

called on to apply the statute to a defined case or controversy, may not construe the statute so as to avoid the constitutional questions. For us to decide the constitutional question by anticipating such an authoritative construction of the state statute would be either to decide the question unnecessarily or rest our decision on the unstable foundation or our own construction of the state statute which the state court would not be bound to follow. *Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101, 105; see also *Vandenbark* v. *Owens-Illinois Co.*, 311 U. S. 538, 543; *Huddleston* v. *Dwyer*, 322 U. S. 252. Such is not the function of the declaratory judgment'' (pp. 470-471).

The exercise of jurisdiction under the Federal Declaratory Judgment Act is discretionary and not compulsory. *Smith* v. *Massachusetts Mutual Life Ins. Co.* (CA 5), 167 F. 2d 990; *Brillhart* v. *Excess Ins. Co.*, 316 U. S. 491. The remedy by injunction is likewise discretionary. *Peay* v. *Cox, Registrar*, (CA 5), 190 F. 2d 123.

Many recent federal cases reflect the doctrine of abstention whereby the federal courts ''exercise a wise discretion'' in withholding exercise of jurisdiction. *Railroad Commission of Texas* v. *Pullman Company*, 312 U. S. 496; *Chicago, et al.* v. *Fieldcrest Dairies, Inc.*, 316 U. S. 188; *Burford* v. *Sun Oil Co.*, 319 U. S. 315; *Spector Motor Service, Inc.* v. *McLaughlin, Tax. Com.*, 323 U. S. 101; *American Federation of Labor* v. *Watson*, 327 U. S. 582; *Shipman* v. *Dupre*, 339 U. S. 321; *Alabama Public Service Com.* v. *Southern Ry. Co.*, 341 U. S. 341; *Stefanelli* v. *Minard*, 342 U. S. 117.

We will not undertake to analyze these decisions nor to quote or restate their many observations other than to consider briefly the opinion in the *Watson* case as illustrating the extent to which the Supreme Court has gone in withholding the exercise of jurisdiction. In that case, appellants sued to enjoin enforcement of the ''Right to Work''

Amendment of the Florida Constitution on the ground that it violated the First and Fourteenth Amendments and the Contract Clause of Article 1, Sec. 10, of the Federal Constitution, and was in conflict with National Labor Relations Act. A three-judge court, without determining whether there was equity in the bill or whether the case should be held until an authoritative interpretation of the Florida law by the Florida courts could first be obtained, proceeded at once to a consideration of the constitutional question. It held that the Amendment did not violate the several constitutional provisions and that there would be time to consider any conflict with the National Labor Relations Act, if and when it arose, since that Act and the Amendment did not on their face appear to be in conflict. The court then vacated its temporary restraining order and dismissed the bill. The Supreme Court stated that the threat to enforce the Florida law was real and imminent; that *quo warranto* proceedings had already been instituted against several of the corporations who were parties to the suit based on the fact that they had closed-shop agreements with the unions, and that appellee Watson had announced a policy to prosecute criminally all violators of the law, including appellant unions, their officers, agents, and individual members, unless they gave up their closed-shop agreements and refrained from renewing or entering into any such agreement. The Court held that the bill had equity, but that trial court erred in adjudicating the merits of the controversy, saying:

> ". . . The crux of the matter is the allegation that there is an imminent threat to an entire system of collective bargaining, a threat which, if carried through, will have such repercussions on the relationship between capital and labor as to cause irreparable damage. We conclude for that reason that the bill states a cause of action in equity.
>
> "As we have said, the District Court passed on the merits of the controversy. In doing so at this state of the litigation, we think it did not follow the proper

course. The merits involve substantial constitutional issues concerning the meaning of a new provision of the Florida constitution which, so far as we are advised, has never been construed by the Florida courts. Those courts have the final say as to its meaning. When authoritatively construed, it may or may not have the meaning or force which appellees now assume that it has. In absence of an authoritative interpretation, it is impossible to know with certainty what constitutional issues will finally emerge. What would now be written on the constitutional questions might therefore turn out to be an academic and needless dissertation." (pp. 595-596).

At the time of the decision in the Watson case, there were proceedings pending in the State court. There are no such proceedings here. However, the application of the rule of abstention is not conditioned upon the pending of a state administrative or judicial proceeding. If they were otherwise, a litigant by the mere device of selecting the federal court as his forum, could, in many cases, pre-empt the exercise of jurisdiction.

This action falls within the sweep of the *Watson* and other cases last referred to and is one in which the court should withhold the exercise of jurisdiction. However, in line with the procedure approved in several of the cited cases, the cause will not be dismissed, but will be retained and remain pending for a reasonable time to permit the exhaustion of such state administrative and judicial remedies as may be available; and thereafter such further proceedings will be had as may then appear to be lawful and proper.

Done, this the 9 day of November, 1953.

RICHARD T. RIVES,
United States Circuit Judge;

SEYBOURN H. LYNNE,
United States District Judge;

H. H. GROOMS,
United States District Judge.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

No. 7,466

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, AN UNINCORPORATED ASSOCIATION; E. J. HABSHEY, PLAINTIFFS,

vs.

S. F. WINDSOR; FELIX L. PARSONS; J. T. THROWER; WILLIAM K. THAMES; MAURY A. McWILLIAMS; AND R. P. McREE, DEFENDANTS

JUDGMENT

This cause came on to be heard on the 27th day of October, 1953, before a duly constituted district court of three judges. All parties hereto stipulated in open court for submission for final decree upon the pleadings, affidavits and testimony taken orally.

Upon review of the pleadings and proof, and the briefs of the respective parties, and in conformity with the opinion of the court contemporaneously filed herewith;

It is, accordingly, ordered, adjudged and decreed by the court that the final relief for which plaintiffs prayed in their complaint be and the same is hereby denied; provided, however, that the above-styled action is not hereby dismissed, but is retained and will remain pending for a reasonable time to permit the exhaustion of such State administrative and judicial remedies as may be available; there-

after, such further proceedings will be had herein as may then appear to be lawful and proper.

Done, this the 9 day of November, 1953.

RICHARD T. RIVES,
United States Circuit Judge,

SEYBOURN H. LYNNE,
United States District Judge,

H. H. GROOMS,
United States District Judge.

APPENDIX C.

CIRCUIT COURT OF MONTGOMERY COUNTY,

Alabama.

In Equity, No. 26815.

GOVERNMENT & CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, an unincorporated association,
Complainant,

vs.

S. F. WINDSOR; FELIX L. PARSONS; J. T. THROWER; WILLIAM K. THAMES; MAURY A. McWILLIAMS, and R. P. McREE,
Respondents.

FINAL DECREE.

This cause coming on to be heard was regularly set for hearing, heard and submitted; and said submission having been considered by the Court, it is hereby declared by the Court as follows:

(1) The Court has jurisdiction of the parties and the subject matter. A justiciable controversy exists as to whether complainant, its activities and members, all as described in the bill of complaint, are subject to the provisions of the Statute of Alabama, HB 231, commonly known as the "Solomon Bill."

(2) Said Statute of Alabama applies to complainant, its activities and its members all as described in the complaint.

The prayer for injunctive relief is denied.

Each party to this action excepts, separately and severally, to each and every part of this decree which is adverse to him or it.

Costs are hereby taxed against complainant, for which execution may issue.

This the 12th day of April, 1954.

/s/ EUGENE W. CARTER,
Circuit Judge in Equity Sitting.

APPENDIX D.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA.

October Term 1954-55.

3 Div. 702

GOVERNMENT & CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO,

vs.

S. F. WINDSOR, *et al.*

3 Div. 702-A

S. F. WINDSOR, *et al.*

vs.

GOVERNMENT & CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO.

Appeals from Montgomery Circuit Court, in Equity.

LAWSON, *Justice.*

This is an appeal from a decree of the circuit court of Montgomery County, in equity, rendered in a declaratory judgment proceeding.

The complainant below was the Government & Civic Employees Organizing Committee, CIO, an unincorporated association, to which we will refer as the Committee. We will sometimes refer hereafter to the Congress of Industrial Organizations as the Organization.

The Committee is the appellant here and contends that the trial court erred in declaring that it is a labor union or labor organization as defined in Act 720, H. 231, approved September 17, 1953, Acts of Alabama 1953, p. 974 (which the reporter will set out and to which we will sometimes refer hereafter as the Solomon Bill), and in declaring that the provisions of the Solomon Bill have application to complainant and its members, including employees of the State of Alabama connected with the Alabama Alcoholic Beverage Control Board (sometimes referred to hereafter as the Board).

We are of the opinion that the bill shows a justiciable controversy between complainant and the respondents (*Curry* v. *Woodstock Slag Corporation*, 242 Ala. 379, 6 So. 2d 479) and that the trial court properly proceeded to the rendition of the final decree with the declarations of which we are in accord. The respondents were officers and agents of the Board from the time the bill was filed until submission here.

The evidence shows that the Organization is composed of affiliated national and international unions, *organizing committees*, local industrial unions and industrial union councils. According to its constitution it is unquestionably a labor organization "in which employees participate for the purpose (among other purposes) of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." (§ 1 of Solomon Bill.)

It is our understanding of the record before us that when the Organization determines that it is advisable to create an international union of CIO, to be composed of employees in a given industry or field of labor, that decision is effectuated in the following manner: Its president, acting under authority of the executive board, appoints a national organizing committee, charged with the

duty and responsibility of organizing the employees into local unions which will later be formed into the international union.

The Committee of instant concern was established as an affiliate of the Organization on March 1, 1950, by the late Philip Murray, the then president of the Organization, acting under authority of an executive board resolution. The National Organizing Committee, selected by President Murray, consisted of a chairman, assistant chairman, secretary-treasurer, and eleven other members.

In establishing that Committee, President Murray wrote:

> "This Committee is authorized and directed to proceed with the organization of employees in federal, state, county, municipal and related governmental agencies. The Committee shall undertake to represent and defend the interests of these employees in the realm of collective bargaining and legislative matters in such manner as to afford them the protection and improvement to which they are entitled.
>
> "This Committee shall prepare and promulgate rules, in accord with the CIO Constitution, for governance of Local Unions which shall affiliate with it.
>
> "Such Committee shall be given the same status and representation on the CIO Executive Board as other affiliates of the CIO.
>
> "The CIO shall apply such financial assistance and other aid as it shall deem necessary in connection with the organizing of said Committee.
>
> "The Committee will be expanded as appears appropriate to provide adequate representation to affiliating groups of governmental employees.
>
> "When the Government and Civil Employees Organzing Committee—CIO shall determine that a National Convention shall be held to set up a permanent organization and such organization is formed, the CIO shall issue a charter to such organization as a new international Union."

The rules governing the administration of the Committee and "its local bodies" were adopted at Washington, D. C., on June 17, 1950. It was provided therein that as to all matters not contained in the rules so adopted, the Constitution of the Organization shall govern. In the rules, the objects of the Committee are stated to be as follows:

> "First. To unite into one organization all eligible workers and to establish as soon as economically and numerically practical an International Union of the CIO.
>
> "Second. To increase the wages and to improve the conditions of employment of our members by legislation, negotiation or other legitimate means.
>
> "Third. To seek the maximum job security of all members and to promote the principle of advancement and promotion based on seniority and merit.
>
> "Fourth. To secure liberal retirement plans to be fully paid for by the employer or employing governmental body.
>
> "Fifth. To seek extension of social security, unemployment compensation, health and welfare legislation to all American workers including governmental workers and employees of non-profit institutions; to strive to liberalize and expand these benefits.
>
> "Sixth. To cooperate with the Congress of Industrial Organizations and its affiliated International Unions and Organizing Committees to the end that all who toil shall become members of the Union of their industry for the purpose of bringing about a more secure, more abundant and happier way of life."

All individuals who become members of the local unions organized by the Committee are required to take an oath to the effect that they will observe the rules of the Committee which, as shown above, include the Constitution of the Organization.

We think it entirely clear that the provisions of the Solomon Bill have application to a local union sponsored and operated according to the terms and provisions of the rules of the Committee and the constitution of the Organization. Public employees, as defined in the Solomon Bill, who become members of such an operated local union are subject to the penalties therein provided. We do not understand appellant to contend to the contrary.

The record shows that the Committee organized a local union in this state. It is not identified by name or number in the record. We will sometimes refer to it as the Alabama local. Approximately 250 State employees who worked for the Board joined that local. Only one or two of them continued their membership after the passage and approval of the Solomon Bill.

Neither the Alabama local nor any of its members, past or present, are parties to this litigation, yet in reality it is that local that complainant sought to have the trial court declare not to be a labor union or labor organization within the meaning of the Solomon Bill.

It is asserted here by the Committee, the appellant, that on the testimony of its only witness, James W. Battles, the trial court should have so decreed, irrespective of the terms and provisions of the constitution of the Organization and the rules of the Committee.

Battles was never a member of the Alabama local. He identified himself at one point in his testimony as being a "national representative of the CIO attached to the Government & Civic Employees Organizing Committee." At another point in his testimony he said that he was a staff representative assigned to the Alabama local. Apparently he was that local's guiding hand.

He testified that in June, 1953, he made an effort to negotiate with the members of the Board on behalf of

certain of its employees who were then members of the Alabama local. He was unsuccessful. From that time until the passage and approval of the Solomon Bill the membership of the Alabama local remained approximately the same although, according to Battles, all efforts to bargain collectively and to negotiate with the Board were abandoned.

Thereafter, according to Battles, the Alabama local became merely a discussion group wherein the Committee sought to assist the members of the Alabama local privately and in union meetings with respect to their rights and privileges under state and federal laws and with respect to common interests involving the welfare and working conditions of the members and other citizens of the United States and with respect to public affairs, public figures, economic and political issues.

The constitution, rules and bylaws of a labor union or labor organization are the source of its authority. They constitute the contract between the labor union and its members, as well as the contract between members of the union.—*Alabama State Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. 2d 810. The statement of Battles to the effect that "we" abandoned the usual procedure pursued by labor organizations to accomplish their purposes is in irreconcilable conflict with the declared purposes and object of the Organization and of the Committee. The record before us fails to show any authority whatsoever whereby a local union on its own volition or upon the mere advice of a representative of the Organization may abandon the declared purposes and objects of the parent organization. Such an attempt to change the purpose of the local union appears to be subversive and prohibited by the constitution and laws of the national organization.—*Congress of Industrial Organizations* v. *City of Dallas* (Tex. Civ. App.), 198 S. W. 2d 143; *Perez* v. *Board of*

Police Com'rs of City of Los Angeles (Cal. Dist. Ct. of App.), 178 P. 2d 537.

Moreover, there are parts of Battles' testimony which do not support his statement to the effect that after the Board refused to negotiate, the Alabama local became a mere discussion group. The following transpired during the examination of Battles:

> "Q. You said when you couldn't get collective bargaining you resorted to other means that were legitimate. What do you mean by resorting to other means legitimate, toward having the wages raised?
>
> "A. I see what you mean. I went there with a group of employees before the Personnel Board after that, and we did settle quite a few grievances which they had."

We are of the opinion that the decree of 3 Div. 702 should be affirmed, that is, the appeal from the final decree.

After the final decree was rendered the respondents gave notice of appeal from a previous decreee which overruled their demurrer to the bill. That attempted appeal has been submitted here in the same record as the appeal from the final decree and has been given the number 3 Div. 702-A.

The appeal of the respondents came too late and must be dismissed.—*Jones* v. *Industrial Life & Health Ins. Co.*, 222 Ala. 399, 132 So. 890; 4 C. J. S. 400-402. Appeal and Error, § 212 (d and e). We point out, however, that in our consideration of the appeal from the final decree we indicated that the grounds of demurrer here argued by respondents below were not well taken.

The decree in 3 Div. 702 is affirmed.

The appeal in 3 Div. 702-A is dismissed.

LIVINGSTON, C. J., STAKELY and MERRILL, JJ., concur.

APPENDIX E.

Copy of State Statute Involved

H. B. 231 5/15/53 RI RFD State Administration 6/19/53 R2 Calendar 8/4/53 R3 at length Yeas 58 Nays 17 by Messrs. Solomon, Wilson, Givhan, Butler, Summerlin, Malone (Houston), Engelhardt, Weathers, Faulk, Branyon.

A Bill to Be Entitled an Act

To provide that any public employee who joins or participates in a labor union or labor organization shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and all other rights, benefits, or privileges which he enjoys as a result of his public employment.

Be It Enacted by the Legislature of Alabama:

Section 1. As used in this act the term "labor union or labor organization" means any organization of any kind, in which employees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and the term "public employee" means any person whose compensation is derived in whole or in part from the State, or any agency, board, bureau, commission or institution thereof.

Section 2. Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeit all rights afforded him under the

State Merit System, employment rights, re-employment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment.

Section 3. This act shall not apply to persons employed as teachers by any county or city board of education or trade schools or institutions of higher learning, nor shall it apply to those employees of the State Docks Board referred to in Title 38, Section 17, of the Code of Alabama, 1940, nor shall it apply to employees of cities or counties.

Section 4. Any public employee who prior to the passage of this act or to his public employment belonged to a labor union or labor organization and as a result thereof has acquired insurance benefits or any other financial benefits may continue to participate in such labor union or labor organization to the extent that he shall not lose any benefits thus acquired.

Section 5. The provisions of this act are severable. If any part of the Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 6. All laws or parts of laws which conflict with this act are repealed.

Section 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

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Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

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BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

Defendants-appellees, in their Motion to Dismiss or Affirm, seek to cloud the serious constitutional issues squarely presented hereby making the case over. But the facts are plain and uncontradicted in the record:

1. Plaintiff Union is an organization having as one of its purposes:

"Second: To increase the wages and improve the conditions of employment of our members by legislation, negotiation or other legitimate means."

2. When defendants denied that plaintiff Union had the right to negotiate with defendants as to Alcohol Beverage Control employees, plaintiff Union acceded to such denial and thereafter sought to assist its members in individual employment problems and to meet and consult with them as to economic and political issues and public and private affairs. As the Alabama Supreme Court pointed out, part of plaintiff Union's activity after defendants' refusal to bargain collectively was reflected in the following testimony by Battles, the Union representative:

"A. I see what you mean. I went there with a group of employees before the Personnel Board after that, and we did settle quite a few grievances which they had."

3. The Alabama Supreme Court has held on these facts, comprising the identical record before this Court, that plaintiff Union is a "labor organization." Under the Solomon Act, then:

"Any public employee who joins or participates in [Government and Civic Employees Organizing Committee, C. I. O.] or who remains a member of or who continues to participate in [Government and Civic Employees Organizing Committee, C. I. O.] shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment."

Defendants' entire case rests on a *non sequitur*—the fallacious third term of the syllogism stated at page two of defendants' Motion to Dismiss or Affirm:

"In short, the act prohibits a state employee from being a member of or participating in such an organi-

> zation for the purpose of collective bargaining with the state."

It is union membership alone that the Solomon Act outlaws for the public employee, not membership for purposes of collective bargaining; and the Alabama Supreme Court has upheld that outlawry because the declared purposes of plaintiff Union include, among other things, the increasing of its members' wages and improvement of their conditions of employment "by legislation, negotiation or other legitimate means" and because one of its activities was to assist its members in presentation of their individual grievances.

Imposition of such an arbitrary condition on all state employees has never come before this Court until now. Unable to meet the constitutional merits on this ground, defendants attempt to sidestep the constitutional infirmity by making this case what it is not.

Thus, this Court is not here concerned with the question whether a state can legally prohibit unionization among policemen or firemen (as in the *Hickman, King, City of Jackson, Fraternal Order of Police, Coane, Hutchinson, Carter, McNatt* and *San Antonio Fire Fighters' Local* cases on which defendants' Motion to Dismiss or Affirm seeks to rely at pages 4 and 5). In such cases the special, semi-military problems of discipline have controlled the judicial decisions:

> "The police and fire departments are in a class apart. Both are at times charged with the preservation of the public order, and for manifold reasons they owe to the public their undivided allegiance. The power in the state of complete control is imperatively necessary if discipline is to be maintained." *Carter* v. *Thompson*, 164 Va. 312, 180 S. E. 410, 412.

Plaintiff Habshey is a liquor salesman employed in a state operated retail liquor store—scarcely a member of a "class apart."

Nor is this Court here concerned with the question whether a state can legitimately bar a union which is insisting on its right to collective bargaining as the means for fixing the terms and conditions of public employment (as in the *Miami Local Water Works* case, on which defendants' Motion to Dismiss or Affirm seeks to rely at page 5). Perhaps nothing illustrates the arbitrary character of the Solomon Act in its application to plaintiff Union quite as well as Battles' testimony on which the Alabama Supreme Court and defendants' Motion to Dismiss or Affirm seized, as to "settl[ing] quite a few grievances which they [the employees] had."

For the processing of grievances is the converse of collective bargaining—the individual settlement of individual employee problems within the framework of a fixed employment relationship, as contrasted with the establishment of the terms and conditions of the employment relationship itself for an entire employee group. This basic distinction has been recognized by Congress in the National Labor Relations Act (29 U. S. C. § 159 (a)):

> "(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment; *Provided*, that any individual employee or a group of employees shall have the right at any time to present grievances to the employer and have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment,"

and by such decisions as *Mugford* v. *Mayor and City Council of Baltimore*, 185 Md. 266, 44 Atl. 2d 745, 747 (1945),

where after holding that a union could not insist on collective bargaining to fix the terms and conditions of public employment, the court said:

> "But it by no means follows that employees may not designate a representative or spokesman to present grievances.
>
> "It has been frequently held that a municipality, in performing work or other duties it is required by law to do, cannot discriminate in favor of members of a labor union. Such action would not only be unlawful but would also tend to constitute a monopoly of public service by members of a labor union, which the law does not countenance. By the same force of reasoning, a citizen who is a member of a union cannot, by that fact alone, be barred from a position in the public service (citing authorities)."

Indeed, to prohibit to an employee the right of assistance and counsel of his choice in the presentation and disposition of his individual employment problems at a Personnel Board hearing in itself presents another aspect of the due process problem. Compare this Court's statement in *Powell* v. *Alabama*, 287 U. S. 45, 69; 77 L. Ed. 158, 53 S. Ct. 55 (1932), most recently quoted in *Chandler* v. *Fretag*, 348 U. S. 3, 10, 99 L. Ed. 4, 75 S. Ct. 1 (1954):

> "If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense."

When the state's representatives advised plaintiff Union that collective bargaining—meaning the collective negotiation of the terms and conditions of the basic employment relationship—was not "legitimate", plaintiff Union complied with its basic statement of purpose and refrained

from such negotiation. But when plaintiff Union, as an association of individuals, acts to aid and counsel those individuals in the hearings on their individual problems and grievances at their request, denial of that right is a deprivation of due process.

Rather than the nonexistent case that defendants ask this Court to affirm, this Court is here called upon to decide the case properly before it: Whether the Constitution permits a state to bar union membership to its employees because the union believes in collective bargaining, where legitimate, as one of its ultimate objectives and because the union has aided its members in the disposition of their individual grievances. The constitutional choice is between *C. I. O.* v. *Dallas*, 198 S. W. 2d 143 (Tex. Civ. App.), cited at page 5 of defendants' Motion To Dismiss or Affirm, on the one hand, and this Court's own decisions in:

> *Slochower* v. *Board of Higher Education*, 350 U. S. 551, 100 L. Ed. 449, 76 S. Ct. 637 (1956).
>
> *Wieman* v. *Updegraff*, 344 U. S. 183, 97 L. Ed. 216, 73 S. Ct. 215 (1952).
>
> *Adler* v. *Board of Education*, 342 U. S. 485, 96 L. Ed. 517, 72 S. Ct. 380 (1952).
>
> *Garner* v. *Board of Education*, 341 U. S. 716, 95 L. Ed. 1317, 71 S. Ct. 909 (1951)

on the other hand.

It is because defendants wholly ignore the impact of this Court's decisions that they also mistake the thrust of the equal protection argument. No one contends that the state must cure an entire evil in all its possible applications at one time. But where the question is whether the evil exists at all—whether the statutory standard is a "reasonable, lawful and nondiscriminatory term" (*Slochower* v. *Board of Higher Education*, 350 U. S. 551, 555.

100 L. Ed. 449, 453, 76 S. Ct. 637, 639-640 (1956)), to impose on government employment—the exceptions made by that statute become relevant. We resubmit that whatever the "evil" of Union membership may be upon which the Solomon Act is grounded (or even whatever the "evil" of collective bargaining as to public employees might be), there can be no rational explanation as to why that "evil" does not pervade the unionization of (or collective bargaining for) teachers, or city employees, or county employees, or State Docks Board employees. The Alabama legislature has not "excluded from regulatory measures organizations which it has reason to believe are already appropriately regulated by either state or national legislation," which this Court found sufficient justification for the classification in *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 472, 89 L. Ed. 1725, 65 S. Ct. 1384 (1945), relied on by defendants. Instead, the arbitrary and specific exceptions to the general statutory rule constitute the same type of "invidious discrimination" which this Court has so often held to violate the equal protection clause.

Finally, it will not do for defendants to raise the straw man, which they seek to draw as a "reasonable conclusion from reading the decision of the Supreme Court of Alabama," that the plaintiffs might not be subject to the Solomon Act and therefore might lack standing to raise the constitutional questions here. Defendants cannot escape the fact that the Alabama Supreme Court flatly held plaintiff Union and its members subject to the Solomon Act. The identical record on which the holding was made is the record before this Court, and the question whether such application of the Act to plaintiff Union and its members is constitutional cannot be dodged. Where the facts before this Court, as here, are the same facts on which the state court has held the challenged act ap-

plicable, the constitutional question is presented four-square.

When the position of defendants and the decision of the Alabama Supreme Court are stripped of verbiage, it is plain that plaintiff Union has been found a "labor organization" under the Solomon Act, and its members have been barred from state employment, because plaintiff Union and its members share a belief in the process of collective bargaining where legitimate. Such a belief has been held fatal by the state court even though on the record that belief is not being translated into action. We submit that this untenable doctrine inhibits plaintiffs' constitutional rights for fear of a nonexistent "danger" which is neither "clear" nor "present".

We resubmit that the constitutional questions presented by this appeal are substantial and accordingly ask that defendants' Motion To Dismiss or Affirm be denied.

Respectfully submitted,

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BRIEF FOR APPELLANTS.

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OPINIONS BELOW.

The opinion of the United States District Court (R. 66-68) is reported at 146 F. Supp. 214 (1956).

The earlier opinion of the United States District Court (R. 42-49) was reported at 116 F. Supp. 354 (1953), and the prior judgment of the District Court in accordance with that opinion was affirmed by this Court *per curiam* without opinion, 347 U. S. 901 (1954) (see mandate at R. 53-55).

The state court decisions to which the opinion of the District Court refers (R. 67) were an unreported decree of the Circuit Court of Montgomery County, Alabama (R. 44) and the opinion of the Supreme Court of Alabama (R. 57-62) reported at 262 Ala. 285, 78 S. 2d 646 (1955).

JURISDICTION.

The judgment of the United States District Court (R. 68-69) was entered February 17, 1956. Notice of Appeal (R. 69-70) was filed March 21, 1956, and time for docketing the case was enlarged by orders of the District Court entered May 18, 1956 and August 17, 1956, on file with the Clerk of this Court. The appeal was timely filed September 14, 1956 and probable jurisdiction was noted November 13, 1956. The jurisdiction of this Court rests on 28 U. S. C. § 1253.

STATUTE INVOLVED.

The Solomon Act (Acts of Alabama [1953] p. 974) provides as follows:

> SECTION 1. As used in this act the term "labor union or labor organization" means any organization of any kind, in which employees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and the term "public employee" means any person whose compensation is derived in whole or in part from the State, or any agency, board, bureau, commission or institution thereof.
>
> SECTION 2. Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and other rights,

benefits, or privileges which he enjoys as a result of his public employment.

SECTION 3. This act shall not apply to persons employed as teachers by any county or city board of education or trade schools or institutions of higher learning, nor shall it apply to those employees of the State Docks Board referred to in Title 38, Section 17, of the Code of Alabama, 1940, nor shall it apply to employees of cities or counties.

SECTION 4. Any public employee who prior to the passage of this act or to his public employment belonged to a labor union or labor organization and as a result thereof has acquired insurance benefits or any other financial benefits may continue to participate in such labor union or labor organization to the extent that he shall not lose any benefits thus acquired.

SECTION 5. The provisions of this act are severable. If any part of the Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

SECTION 6. All laws or parts of laws which conflict with this act are repealed.

SECTION 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

QUESTIONS PRESENTED.

1. Can a state, consistently with the Fourteenth Amendment, exclude a government employee, working as a clerk in a state-operated liquor store, from further public employment solely because of membership or participation in a labor union?

2. Can a state, consistently with the Fourteenth Amendment, establish as a condition of continued employment by the state, resignation from membership in a labor organization because that organization has, as one of its ultimate purposes, the improvement of wages through collective bargaining when, but only when, such bargaining is permitted by the state?

3. Can a state, consistently with the Fourteenth Amendment, prohibit state employees of a retail liquor store from exercising their rights of voluntary association, mutual assembly, consultation, discussion and free speech because those rights are exercised through membership or participation in a voluntary association which also has, as one of its purposes, collective bargaining if legitimate, with one or more employers?

4. If a state can constitutionally prohibit its employees from joining any labor union, can it, consistently with the Fourteenth Amendment, limit such prohibition to employees who are neither teachers, nor employed by those agencies of the state in which the employees are already fully organized into labor unions, nor employed by cities or counties?

5. Does the Solomon Act violate the Fourteenth Amendment on its face and as applied to plaintiffs and to the members of plaintiff Government and Civic Employees Organizing Committee, CIO (hereinafter called "plaintiff union")?

STATEMENT.

Plaintiff Habshey is a clerk in a retail liquor store operated by the Alabama Alcoholic Beverage Control Board, hereinafter called ABC Board (R. 4, 34), and is a member of plaintiff Union (R. 71). Under the terms of the Solomon Act his mere continued membership in plaintiff Union, without more, causes the forfeiture of all his employment rights and benefits, although he has no other means of livelihood (R. 12).

Plaintiff Union* is a labor organization originally es-

* In July, 1956, in consequence of the merger of the American Federation of Labor and the Congress of Industrial Organizations.

tablished by the Congress of Industrial Organizations (Complainant's Ex. 1 of Pl. Ex. 1; R. 101, 93)** and having the following objects (Complainant's Ex. 1; R. 104, 93):

> "*First.* To unite into one organization all eligible workers and to establish as soon as economically and numerically practical an International Union of the CIO.
>
> "*Second.* To increase the wages and to improve the conditions of employment of our members by legislation, negotiation or other legitimate means.
>
> "*Third.* To seek the maximum job security of all members and to promote the principle of advancement and promotion based on seniority and merit.
>
> "*Fourth.* To secure liberal retirement plans to be fully paid for by the employer or employing governmental body.
>
> "*Fifth.* To seek extension of social security, unemployment compensation, health and welfare legislation to all American workers including governmental workers and employees of non-profit institutions; to strive to liberalize and expand those benefits.
>
> "*Sixth.* To cooperate with the Congress of Industrial Organizations and its affiliated International Unions and Organizing Committees to the end that all who toil shall become members of the Union of their industry for the purpose of bringing about a more secure, more abundant and happier way of life."

---

plaintiff Union took action to merge with its AFL-affiliated counterpart into the American Federation of State, County and Municipal Employees, affiliated with the American Federation of Labor and Congress of Industrial Organizations. Under the merger agreement every member of plaintiff Union, including plaintiff Habshey, automatically continues as a member of the merged union and all the provisions of plaintiff Union's Rules relevant to this cause remain applicable to such members.

** Since the transcript of the state court proceedings was incorporated by stipulation (R. 71) into the record before the United States District Court as Plaintiff's Exhibit 1, the record references in this brief will cite the page number at which the exhibit was offered in evidence before the state court. In each case the admission into evidence before the United States District Court was accomplished by the aforesaid stipulation.

When, prior to the passage of the Solomon Act, plaintiff Union had asked the predecessors of defendants (members and supervisory agents of the ABC Board) to negotiate regarding ABC Board employees, defendant's predecessors had stated that such bargaining could not be engaged in under Alabama law (R. 13, 88-89). Plaintiff Union acceded to such refusal and thereafter asserted neither a right to bargain collectively nor a right to strike (R. 89). Instead, plaintiff Union sought to assist its members in individual employment problems and to consult with its members privately and in Union meetings as to common problems involving working conditions and as to public affairs, economic and political issues, state and federal political candidates, rights under federal legislation (such as the Social Security Act) and the possibility of extending such rights to members and others, matters of federal and state taxation, eligibility for the right of franchise under state and federal laws, and pending legislation, including a proposed bill to provide for collective bargaining for state employees (R. 12-13, 89-91). As part of such assistance in connection with individual employment problems, a Union representative appeared before the Alabama Personnel Board with employees to help settle grievances which had arisen (R. 90).

Promptly after the Solomon Act was passed, defendant's predecessors caused copies of the bill to be sent to all ABC Board store managers with a letter directing that each employee be caused to read the Act carefully, and sign a copy to indicate such reading, and further directing that a copy of the Act be placed on the bulletin board in each store (Complainant's Ex. 3; R. 143, 135). Plaintiff Habshey and all other ABC Board employees were required so to read and initial the copy of the Act (R. 71). In addition, the administrator of the ABC Board wrote plaintiff Union, in answer to a telegraphic request for infor-

mation, advising "that the Solomon Bill will be enforced by the Board in the same manner as the ABC Act or other pertinent laws" (Pl. Ex. C to Complaint; R. 15, 91, 129). Immediately thereafter practically all employees of the ABC Board who had belonged to plaintiff Union (numbering approximately 250; R. 88, 92, 95) withdrew their Union membership (R. 71). The membership "just practically evaporated" (R. 92), dropping to one or two members in all (R. 100). Plaintiff Habshey remained a member because of his belief that he was as much entitled to belong to such an organization as he was entitled to belong to his church (R. 71). No specific policies or enforcement measures were adopted by the ABC Board relating to the Solomon Act other than the action mentioned in this paragraph (R. 129, 137).

Plaintiffs filed suit in the United States District Court for the Northern District of Alabama, Southern Division, October 7, 1953, seeking an injunction against enforcement of the Solomon Act. Temporary relief was denied on the oral assurance of defendants in open court that the Act would not be applied to forfeit any of plaintiff Habshey's employment or other rights pending the court's final decision (R. 36). After hearing, the three-judge District Court, in its first opinion, 116 F. Supp. 354, 359 (N. D. Ala., 1953) (R. 42) and its judgment order of November 9, 1953 (R. 49), which was affirmed by this Court, 347 U. S. 901 (1954) (R. 53), withheld the exercise of jurisdiction because no authoritative construction of the Act had been made by the Alabama state courts, but retained the cause "for a reasonable time to permit the exhaustion of such State administrative and judicial remedies as may be available." In order to obtain such authoritative construction of the Act as suggested by the three-judge court, plaintiff Union filed an equity action on February 19, 1954 in the Circuit Court of Montgomery County, Alabama, praying

for an injunction against the enforcement of the Solomon Act against plaintiff Union or its members and further praying for a declaratory judgment determining that plaintiff Union was not a "labor union or labor organization" within the Solomon Act and that the Act had no application to plaintiff Union or its members. The record before the Circuit Court was the identical record which was subsequently incorporated by reference as the record in this case (R. 71).

On April 12, 1954 the Circuit Court of Montgomery County, Alabama, denied plaintiff Union's prayer for injunctive relief, declaring (R. 144):

> "Said Statute of Alabama [Solomon Act] applies to complainant [Union], its activities and its members all as described in the complaint."

On appeal, the Alabama Supreme Court affirmed the Circuit Court decree March 10, 1955 (R. 57-62), on the ground that the Union was a "labor union" subject to the Solomon Act, irrespective of its actions, because one of its governing objects remained the improvement of working conditions "by legislation, negotiation or other legitimate means."

On February 15, 1956, the instant case was resubmitted to the three-judge District Court for final decree. On February 17, 1956, the three-judge Court entered the judgment here appealed from, ruling "that the Alabama courts have not construed the Solomon Bill in such a manner as to render it unconstitutional" and dismissing plaintiffs' action with prejudice (R. 68). This appeal followed.

SUMMARY OF ARGUMENT.

I. It is undisputed in the record that plaintiff Union is neither engaging in, nor claiming the right to engage in, collective bargaining with the State of Alabama or the Alabama ABC Board. It is equally undisputed that plaintiff Union's objects include the increasing of wages and improvement of employment conditions for its members "by legislation, negotiation or other legitimate means." Since collective bargaining was not a "legitimate means" as to public employees under Alabama law, plaintiff Union did not act on its belief in the principles of collective bargaining; its only activities on behalf of its members who were employees of the ABC Board were to assist such members in individual employment problems (including the presentation of grievances before the Personnel Board of Alabama) and to meet and consult with them as to economic and political issues and public and private affairs (including discussion of a proposed bill to permit collective bargaining as to state employees). Nevertheless the Alabama Supreme Court specifically held the Solomon Act to apply to plaintiff Union so that, under the terms of that Act:

> "Any public employee [such as plaintiff Habshey] who joins or participates in [Government and Civic Employees Organizing Committee, C. I. O.] or who remains a member of or who continues to participate in [Government and Civic Employees Organizing Committee, C. I. O.] shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment."

Such authoritative application of the Solomon Act by the Alabama Supreme Court, on the identical record which

is now before this Court, effectively outlaws mere membership in plaintiff Union for public employees like plaintiff Habshey, a clerk in a state-owned retail liquor store, on penalty of loss of all employment rights. It is such application and holding that must meet the standards of the Fourteenth Amendment, and defendants cannot sidestep this Court's review of the constitutional issues by claiming that the Alabama Supreme Court either said or meant something other than its actions conclusively determine.

II. As applied by the Alabama Supreme Court to plaintiffs, the Solomon Act violates the due process clause of the Fourteenth Amendment. The Act restricts the exercise of the constitutional rights to freedom of speech, assembly and petition; it establishes a criterion for public employment (non-membership in a labor union) which, having no relationship to the employee's suitability for public employment, is patently arbitrary and discriminatory. Such a criterion cannot withstand the principles stated by this Court in *Slochower,* 350 U. S. 551 (1956), *Wieman,* 344 U. S. 183 (1952), *Adler,* 342 U. S. 485 (1952), and *Garner,* 341 U. S. 716 (1951).

This Court is not confronted in this case with the question whether a state may prohibit unionization among policemen or firemen, nor with the question whether a state may bar a union which insists on a right to collective bargaining as the means for fixing the terms and conditions of public employment. Indeed, plaintiff Union's activity in assisting its members in the processing of grievances, upon which the Alabama Supreme Court seized as support for its opinion, is not only the obverse of the collective bargaining process, but for the state to prohibit such assistance might itself create a due process problem by the denial of an effective hearing to such members.

III. The exclusions made by the Solomon Act, except-

ing from its application teachers, employees of the State Docks Board, and city or county employees, are wholly arbitrary and unreasonable. Such exclusions reinforce the constitutional infirmities of the statute under the due process clause of the Fourteenth Amendment and, moreover, violate the equal protection clause of that Amendment. No rationalization has ever been offered, either by defendants or by the state courts, of any claimed "evil" which would purport to justify the restrictions made by the Act on basic constitutional rights; but whatever such "evil" implicit in mere union membership may be, it defies explanation to find that evil present as to plaintiff Habshey, a retail liquor salesman, but absent as to teachers, or city employees (such as policemen and firemen), or county employees, or State Docks Board employees.

ARGUMENT.

I. THE SOLOMON ACT HAS BEEN CONCLUSIVELY CONSTRUED BY THE ALABAMA SUPREME COURT TO APPLY TO PLAINTIFF UNION AND ITS MEMBERS; IT IS THE CONSTITUTIONALITY OF THAT APPLICATION WHICH IS BEFORE THIS COURT.

At the time this case was last before this Court (347 U. S. 901 (1954)), troublesome questions were presented for determination preliminary to the constitutional issues. The three-judge District Court had been of the view that the Solomon Act could be construed by the state courts to meet the challenge of unconstitutionality. Accordingly, it had refused injunctive relief but had retained jurisdiction. This Court affirmed.

Plaintiff Union then instituted an action in the state courts for injunctive and declaratory relief so that, as provided in the District Court decree, an authoritative construction of the Act, as applied to plaintiff Union, could be obtained. The Alabama Supreme Court has now construed the Act as applicable to any organization which has, as one of its ultimate objectives, the achievement of a collective bargaining relationship with any employer—even though the organization abides by existing law forbidding such bargaining with the state and contents itself, as did plaintiff Union, with other activities of a "legitimate" nature so long as collective bargaining with the state remained forbidden. Now the question is squarely presented as to whether a state may constitutionally prohibit its employees from joining or remaining members of an organization such as plaintiff Union.

Under the record on which the Alabama Supreme Court held the Solomon Act applicable to plaintiff Union, the

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 423

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING COMMITTEE, CIO, AN UNINCORPORATED ASSOCIATION; E. J. HABSHEY,

Plaintiffs-Appellants,

vs.

S. F. WINDSOR, FELIX L. PARSONS, HARRELL HAMMONDS, KNOX McRAE, CLARENCE V. EVANS, AND MELVIN DAWKINS,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

REPLY BRIEF FOR APPELLANTS.

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identical record which by stipulation comprises the record evidence on appeal before this Court (R. 71), the following facts are plain and uncontradicted:

1. Plaintiff Union is an organization having as one of its purposes (R. 104):

"Second: To increase the wages and improve the conditions of employment of our members by legislation, negotiation or other legitimate means."

2. When defendants denied that plaintiff Union had the right to negotiate with defendants as to Alcohol Beverage Control employees, plaintiff Union acceded to such denial (R. 89) and thereafter sought only to assist its members in individual employment problems and to meet and consult with them as to economic and political issues and public and private affairs (R. 12-13, 89-91). As the Alabama Supreme Court pointed out, part of plaintiff Union's activity after defendants' refusal to bargain collectively was reflected in the following testimony by Battles, the Union representative (R. 90):

"A. I see what you mean. I went there with a group of employees before the Personnel Board after that, and we did settle quite a few grievances which they had."

3. Plaintiff Union has been held a "labor organization" within the terms of the Solomon Act.

It is perhaps a truism to say that this Court reviews judgments, not statements in opinions; holdings, not talk.

Black v. *Cutter Laboratories*, 351 U. S. 292, 297 (1956).

Where, as here, federal constitutional rights are asserted, this Court is bound by the construction of a state statute by the Supreme Court of that state; but it is this Court's duty to determine for itself whether the effect and operation of the statute, as so construed, deprives the plaintiffs of those constitutional rights. The decision of the state Court as to applicability of the Act is final; the reasoning

of the state Court—and its characterization of the undisputed facts in the record—are not.

Kern-Limerick, Inc. v. *Scurlock*, 347 U. S. 110, 121 (1954).
Niemotko v. *Maryland*, 340 U. S. 268, 271 (1951).
Oyama v. *California*, 332 U. S. 633, 636 (1948).
Richfield Oil Corp. v. *State Board of Equalization*, 329 U. S. 69, 84 (1946).
Ward & Gow v. *Krinsky*, 259 U. S. 503, 520 (1922).
Corn Products Refining Co. v. *Eddy*, 249 U. S. 427, 432 (1919).
St. Louis S. W. Ry. Co. v. *Arkansas*, 235 U. S. 350, 362 (1914).

Thus it is a binding construction of the Solomon Act that plaintiff Union, with its purposes and activities limited as stated in paragraphs numbered 1 and 2 above, is nevertheless a "labor organization" under that Act. The action of the Alabama Supreme Court—its judgment—was to affirm (R. 62) a decree that declared (R. 144):

> "Said Statute of Alabama applies to complainant [Union], its activities and its members all as described in the complaint."

But neither the state court nor defendants can escape the unconstitutionality of that determination by characterizing the Union's processing of grievances before the Personnel Board as going beyond the scope of a "mere discussion group" (R. 62), or by characterizing the undisputed abandonment of all efforts to bargain collectively or to negotiate with the ABC Board as "in irreconcilable conflict with the declared purpose and object of the organization and of the Committee" (R. 61). This Court is the final arbiter of whether a state has the power to prohibit mere membership in plaintiff Union because, and only because, its statement of objects includes "negotiation or other legitimate means" as methods for securing increased wages and im-

proved conditions of employment. It is this attempted outlawry whose validity is now squarely in issue, for there is no question that union membership alone is the disqualifying criterion:

> "We think it entirely clear that the provisions of the Solomon Bill have application to a local union sponsored and operated according to the terms and provisions of the rules of the Committee [plaintiff Union] and the constitution of the Organization [CIO]. Public employees, as defined in the Solomon Bill, who become members of such an operated local union are subject to the penalties therein provided. We do not understand appellant to contend to the contrary." *Government and Civic Employees Organizing Committee* v. *Windsor*, 262 Ala. 285, 288, 78 S. 2d 646, 649 (1955).

The District Court, in its first decision, concluded that the settlement of wages and other conditions of employment for state employees was a proper subject for state legislative or executive action and not for collective bargaining; that the state could constitutionally, therefore, prohibit its employees from being members of an organization for the purpose of engaging in collective bargaining; and that the question of whether the Solomon Act was so limited should be decided by the state courts.

The state courts have now decided that the statute is not so limited. Whether or not a union presently insists on collective bargaining with the State, and whether or not it accepts the denial of such bargaining under present law and limits itself to lawful activities and efforts to change the law, the state courts have declared that it falls within the statutory ban if one of its ultimate purposes, as expressed in its governing Rules, is to achieve collective bargaining with one or more employers, even—as here—by "legitimate means". And once the union falls within the fatal area, membership alone in that union makes the pen-

alties and forfeitures operative. In short, the Alabama Supreme Court has given the Act a wholly literal reading.

II. THE SOLOMON ACT, AS APPLIED TO PLAINTIFF UNION AND ITS MEMBERS, VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

This case confronts this Court with a new kind of attempt by a state to impose conditions on public employment which cut across constitutional rights of the employees involved. Heretofore this Court has resolved conflicts between claimed state interests and individual rights in such cases as:

Slochower v. *Board of Higher Education*, 350 U. S. 551 (1956).

Wieman v. *Updegraff*, 344 U. S. 183 (1952).

Adler v. *Board of Education*, 342 U. S. 485 (1952).

Garner v. *Board of Education*, 341 U. S. 716 (1951).

Here, however, for the first time the condition sought to be imposed by the state is directed solely against membership in a labor union; mere membership, without more, causes the absolute forfeiture of the employment rights of the government employee if one of the union's ultimate objects is collective bargaining with any employer.

To enforce the Solomon Act, as so construed, and to uphold the patently arbitrary condition it imposes on public employment, would be to run counter to the requirements of due process as made clear in *Wieman* v. *Updegraff*, 344 U. S. 183, 191-92 (1952):

> "For in United Public Workers, though we held that the Federal Government through the Hatch Act could properly bar its employees from certain types of political activity thought inimical to the interests of the Civil Service, we cast this holding into perspective by emphasizing that Congress could not 'enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal

employee shall attend Mass, or take any active part in missionary work.' 330 U. S. at 100. See also *In Re Summers*, 325 U. S. 561, 571 (1945). We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory."

Even in dealing with the sensitive questions of loyalty, a state must of course conform to the requirements of due process. As this Court stated at its last term in *Slochower* v. *Board of Higher Education*, 350 U. S. 551, 555 (1956):

> "The problem of balancing the State's interest in the loyalty of those in its service with the traditional safeguards of individual rights is a continuing one. To state that a person does not have a constitutional right to government employment is only to say that he must comply with reasonable, lawful and nondiscriminatory terms laid down by the proper authorities."

Here no problem of protecting the state against disloyalty of a public servant exists. Rather, the activities which the State of Alabama is seeking to restrict are themselves constitutionally protected:

> "Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of the workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others." *Thomas* v. *Collins*, 323 U. S. 516, 539 (1945).

By infringing those rights the State of Alabama has violated the Fourteenth Amendment.

The arbitrariness of the statutory classification estab-

lished by the Solomon Act is manifest. No relationship between simple membership in a labor union and unsuitableness for public employment has been, or constitutionally could be, established. No attempt has been made to restrict only activities reasonably found by the legislature to have a potential for evil:

> "The heavy hand of the statute falls alike on all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive." *Slochower* v. *Board of Higher Education*, 350 U. S. 551, 558 (1956).

Unable to meet the constitutional merits on this ground, defendants attempt to sidestep the constitutional infirmity by making this case what it is not.

Thus, this Court is not here concerned with the question whether a state can legally prohibit unionization among policemen or firemen. In the several state court cases which have dealt with that problem, the special, semi-military problems of discipline have controlled the judicial decisions:

> "The police and fire departments are in a class apart. Both are at times charged with the preservation of the public order, and for manifold reasons they owe to the public their undivided allegiance. The power in the state of complete control is imperatively necessary if discipline is to be maintained." *Carter* v. *Thompson*, 164 Va. 312, 180 S. E. 410, 412.

Plaintiff Habshey is a liquor salesman employed in a state operated retail liquor store—scarcely a member of a "class apart." Indeed, the remarkable recognition which the Solomon Act gives to the status of policemen and firemen as a "class apart" is to *exempt* them (as city employees) from its prohibitions on union membership (Section 3; R. 9).

Nor is this Court here concerned with the question whether a state can legitimately bar a union which is in-

sisting on its right to collective bargaining as the means for fixing the terms and conditions of public employment (as in *Miami Water Works Local 654* v. *City of Miami*, 157 Fla. 445, 26 S. 2d 194 (1946)). Perhaps nothing illustrates the arbitrary character of the Solomon Act in its application to plaintiff Union quite as well as Battles' testimony on which the Alabama Supreme Court and defendants' Motion to Dismiss or Affirm before this Court seized, as to "settl[ing] quite a few grievances which they [the employees] had."

For the processing of grievances is the obverse of collective bargaining—the individual settlement of individual employee problems within the framework of a fixed employment relationship, as contrasted with the establishment of the terms and conditions of the employment relationship itself for an entire employee group. This basic distinction has been recognized by Congress in the National Labor Relations Act (29 U. S. C. § 159 (a)):

> "(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment; *Provided*, that any individual employee or a group of employees shall have the right at any time to present grievances to the employer and have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment,"

and by such decisions as *Mugford* v. *Mayor and City Council of Baltimore*, 185 Md. 266, 44 Atl. 2d 745, 747 (1945), where after holding that a union could not insist on col-

lective bargaining to fix the terms and conditions of public employment, the court said:

> "But it by no means follows that employees may not designate a representative or spokesman to present grievances.
>
> "It has been frequently held that a municipality, in performing work or other duties it is required by law to do, cannot discriminate in favor of members of a labor union. Such action would not only be unlawful but would also tend to constitute a monopoly of public service by members of a labor union, which the law does not countenance. By the same force of reasoning, a citizen who is a member of a union cannot, by that fact alone, be barred from a position in the public service (citing authorities)."

Accord:

City of Springfield v. *Clouse*, 356 Mo. 1239, 206 S. W. 2d 539, 542 (1947).

City of Los Angeles v. *Los Angeles Building & Construction Trades Council*, 94 Cal. App. 2d 36, 210 P. 2d 305, 313 (1949).

Thus even if it were assumed that public employees could be barred from membership in a union which engaged in collective bargaining efforts to vary terms and conditions of employment fixed by statute, such bar could not extend to members of a union which accepted the statutory terms without attempting to bargain collectively, but advised and assisted the members in presenting their individual problems within the statutory framework. Activity of the latter nature constitutes exercise of First Amendment rights of the same generic character as those protected by this Court in *Thomas* v. *Collins*, 323 U. S. 516, 539 (1945).

Indeed, to prohibit to an employee the right of assistance of his choice in the presentation and disposition of his individual employment problems at a Personnel Board hearing in itself presents another aspect of the due proc-

ess problem. Compare this Court's statement in *Powell* v. *Alabama*, 287 U. S. 45, 69 (1932), most recently quoted in *Chandler* v. *Fretag*, 348 U. S. 3, 10 (1954):

> "If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense."

When the state's representatives advised plaintiff Union that collective bargaining—meaning the collective negotiation of the terms and conditions of the basic employment relationship—was not "legitimate", plaintiff Union complied with its basic statement of purpose and refrained from such negotiation. But when plaintiff Union, as an association of individuals, acts to aid and counsel those individuals in the hearings on their individual problems and grievances at their request, denial of that right is a deprivation of due process.

Rather than the nonexistent case that defendants ask this Court to affirm, this Court is here called upon to decide the case properly before it: Whether the Constitution permits a state to bar union membership to its employees because the union believes in collective bargaining, where legitimate, as one of its ultimate objectives and because the union has aided its members in the disposition of their individual grievances. The constitutional choice is between *C. I. O.* v. *Dallas*, 198 S. W. 2d 143 (Tex. Civ. App.) (the only case upholding such a bar as to all public employees), on the one hand, and this Court's own decisions in:

Slochower v. *Board of Higher Education*, 350 U. S. 551 (1956).

Wieman v. *Updegraff*, 344 U. S. 183 (1952).

Adler v. *Board of Education*, 342 U. S. 485 (1952).

on the other hand. Only one resolution of that choice is possible.

III. THE SOLOMON ACT AND THE EXCLUSIONS THEREFROM VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

In addition to the constitutional infirmity of the Solomon Act itself, the very exclusions made by that act further violate the Fourteenth Amendment by their arbitrary character. In *Adler* v. *Board of Education*, 342 U. S. 485, 493 (1952), this Court said, in upholding a state statute limited to the field of education:

> "A teacher works in a sensitive area in a school room. There he shapes the attitude of young minds towards the society in which they live. In this the state has a vital concern."

Yet the Alabama legislature has made the Solomon Act provisions specifically inapplicable to teachers (Section 3; R. 9). Whatever the unarticulated and unknown "evil" of union membership may be, it apparently does not extend to the teacher who "works in a sensitive area in a schoolroom." Nor does the Act apply to employees of cities or counties, thus presenting the anomaly of placing Alabama policemen and firemen in a "class apart," not by imposing more stringent controls on them in the interest of public safety but by actually excluding them from the restrictions of the Act. Nor, finally, does the Act apply to employees of the State Docks Board (in which latter agency unions affiliated with the railroad brotherhoods had already organized the employees and negotiated wage schedules and working conditions when the Act was passed; R. 14, 35). In sum, the limitations imposed on the Act

by the legislature violate the equal protection clause of the Fourteenth Amendment just as the basic classification made by the Act denies both equal protection and due process.

This is not to say, of course, that the state must cure an entire evil in all its possible applications at one time. But where the question is whether the evil exists at all—whether the statutory standard is a "reasonable, lawful and nondiscriminatory term" (*Slochower* v. *Board of Higher Education*, 350 U. S. 551, 555 (1956)) to impose on government employment—the exceptions made by that statute become relevant. We resubmit that whatever the "evil" of Union membership may be upon which the Solomon Act is grounded (or even whatever the "evil" of collective bargaining as to public employees might be), there can be no rational explanation as to why that "evil" does not pervade the unionization of (or collective bargaining for) teachers, or city employees (including policemen and firemen), or county employees, or State Docks Board employees. The Alabama legislature has not "excluded from regulatory measures organizations which it has reason to believe are already appropriately regulated by either state or national legislation," which this Court found sufficient justification for the classification in *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 472 (1945), relied on by defendants. Instead, the arbitrary and specific exceptions to the general statutory rule constitute the same type of "invidious discrimination" which this Court has held to violate the equal protection clause in such cases as:

Wheeling Steel Corp. v. *Glander*, 337 U. S. 562, 572 (1949).

Hillsborough Township v. *Cromwell*, 326 U. S. 620, 623 (1946).

Skinner v. *Oklahoma*, 316 U. S. 525, 541-42 (1942).

Smith v. *Cahoon*, 283 U. S. 553, 566-67 (1931).

IV. SUMMARY.

In recent terms this Court has often been called upon to mark out the area of constitutional protection of government employees. Here a state legislature has sought to erode that area by prohibiting state employment to every member of a labor union, and the state courts have defined "labor unions" to include any organization one of whose ultimate purposes is the achievement of collective bargaining, even though the organization proposes only to use lawful means to that end, accepts existing restrictions against such bargaining with the state, and confines its activities to other areas of employee interest and advancement where collective bargaining is forbidden.

We think it clear that a state could not, consistently with the Constitution of the United States, forbid its employees from believing in the principle of collective bargaining. We think it equally clear that a state cannot constitutionally prohibit its employees, upon pain of dismissal, from joining an organization because that organization believes in collective bargaining. Yet such a belief, shared by plaintiff Union and its members, has been held fatal by the state court even though on the record that belief is not being, and is not intended to be, translated into action.

We submit that this untenable doctrine inhibits plaintiffs' constitutional rights for fear of a non-existent "danger" which is neither "clear" nor "present". The District Court failed to recognize that the Solomon Act, as construed by the Alabama state courts, violates the Fourteenth Amendment.

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that the judgment of the District Court, dismissing this action with prejudice and with costs, should be reversed and that this case should be remanded with directions to enter a final decree and injunction restraining the enforcement, operation and execution of the Solomon Act in accordance with the prayer of the complaint (R. 7-8).

Respectfully submitted,

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Appellants

VS.

S. F. Windsor, Harrell Hammonds, Knox McRae, Clarence V. Evans, and Melvin Dawkins,
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

MOTION TO DISMISS OR AFFIRM

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Plaintiffs-Appellants,

vs.

S. F. WINDSOR, FELIX L. PARSONS, HARRELL HAMMONDS, KNOX McRAE, CLARENCE V. EVANS, AND MELVIN DAWKINS,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

REPLY BRIEF FOR APPELLANTS.

ARGUMENT.

I. THE CONSTITUTIONALITY OF THE SOLOMON ACT, AS APPLIED TO PLAINTIFF UNION AND ITS MEMBERS, IS SQUARELY BEFORE THIS COURT.

This case, as our original Brief has demonstrated, presents to this Court for the first time a state's attempt to bar union membership for all state employees, solely

because of their belief in the principle of collective bargaining. The constitutional issues have now been presented in even sharper focus by defendants' stress (Def. Br. 15-17) on the manner in which the beliefs of plaintiff Union and its members have been translated into "action." Plaintiffs' Brief 19-21 has already dealt with the matter of plaintiff Union's activities in aiding its members to process grievances. But now defendants discover the most grievous "action" of all (Def. Br. 17):

> "The above testimony of Battles not only tends to show that the union is not a mere discussion group as claimed, but that the union and the state employee members thereof have engaged in sponsoring collective bargaining legislation for state employees and have attempted to defeat legislation which prohibits collective bargaining. As individuals the constitutional right is there, but as state employees it is not. Such action is contrary to the declared public policy of the State of Alabama."

To state this proposition without authority—the only manner in which it can be stated—is to typify defendants' entire case. The public policy of the State of Alabama is, it seems, superior to the United States Constitution's guarantees of freedom of speech and the right to petition for redress of grievances, even when those rights are being exercised only to change that public policy by orderly legislative means. The Constitution cannot be read so to make public employment the equivalent of serfdom, or to condition such employment on the surrender of these most basic freedoms.

Aside from this straightforward (although untenable) statement of constitutional "principle", defendants seek vainly to avoid the constitutional issues before this Court. They wholly ignore, because they cannot cope with, the basic proposition that this Court, not the state courts or

defendants, will determine the constitutional impact of the Solomon Act as applied by the state courts. Instead they attempt to sidestep the constitutional questions by avoiding the record and arguing that plaintiff Union is a collective bargaining organization which can, therefore, be outlawed. This sleight-of-hand is accomplished by quoting plaintiff Union's purposes and placing one of them (that of improving its members' lot by "negotiation" or "collective bargaining") in bold face type (Def. Br. 12)—apparently hoping to obscure the fact that on the undisputed record those purposes are stated in the alternative as "negotiation or other *legitimate* means" (R. 3) (italics added).

Such attempt by defendants simply will not wash; for it is beyond cavil that the Alabama state courts' square decision was (R. 144, affirmed R. 62):

> "Said Statute of Alabama [Solomon Act] applies to complainant [Union], its activities and its members all as described in the complaint."

Defendants' Brief 12, although it is careful to emphasize the term "negotiation" as one of plaintiff Union's purposes, is not equally careful in quoting the part of plaintiff's complaint which limits that purpose. Defendants' quotation substitutes the word "as" for the word "or"—but the complaint itself states plainly that plaintiff Union exists (R. 73):

> "in order to improve, by negotiation, the conditions of employment for and the quality of service rendered by such employees *or* to effect such improvement by legislation, or other legitimate means" (italics added).

But no amount of quotation, whether by defendants or by ourselves, or whether in or out of context, can alter these simple propositions, established by the uncontradicted record:

1. Plaintiff Union engages in collective bargaining only where such means is permissible under the applicable state law.

2. When defendants' predecessors denied plaintiff Union's right to negotiate with them, plaintiff Union refrained from so doing.

3. Such abstention was in accordance with its basic organization and purposes.

4. Notwithstanding such abstention, the Solomon Act outlaws the belief in collective bargaining shared by plaintiff Union and its members.

The constitutional questions presented by such application of the Solomon Act are squarely before this Court.

II. THE SOLOMON ACT, AS APPLIED TO PLAINTIFF UNION AND ITS MEMBERS, VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

Defendants are equally unwilling to meet, on the merits, the due process issues as presented by our original Brief 16-18. No attempt whatever is made to deal with the controlling principles established by *Slochower* v. *Board of Higher Education*, 350 U. S. 551 (1956); *Wieman* v. *Updegraff*, 344 U. S. 183 (1952); *Garner* v. *Board of Education*, 341 U. S. 716 (1951): principles which condemn the Solomon Act out of hand. *Adler* v. *Board of Education*, 342 U. S. 485 (1952), only exemplifies the same limitations on state power expressed in *Slochower*, 350 U. S. 551, 555 (1956):

> "To state that a person does not have a constitutional right to government employment is only to say that he must comply with reasonable, lawful and nondiscriminatory terms laid down by the proper authorities."

The prohibition (as in *Adler*) of membership in organizations which advocate the unlawful overthrow of govern-

ment, knowing of such purposes, contrasts sharply with the prohibition of mere membership in plaintiff Union. Whatever may be said as to the former, the latter prohibition is wholly unrelated to the issue of fitness for public employment.

Confronted with the adverse decisions of this Court, Defendants' Brief 20-22 attempts to fall back on several state court decisions barring unionization of policemen and firemen. As our original Brief 18 pointed out, it is more than coincidence that every one of those cases specifically rested on and quoted from the decision in *Carter* v. *Thompson*, 164 Va. 312, 180 S. E. 410, 412 (1935), treating policemen and firemen as "a class apart" because of the special semi-military disciplinary problems involved.

We do not presume to anticipate this Court's decision in *Verhaagen* v. *Reeder*, Docket No. 603, October Term, 1956, which involves the precise issue of prohibiting union membership for firemen. Suffice it to say that the Solomon Act is not so narrowly drawn. Even if the state's interest in matters of public order and safety might be considered to justify barring union membership for policemen or firemen (or even for employees in the State Insane Hospitals, as urged at Def. Br. 21), that justification could not and does not apply to *all* state employees. Plaintiff Habshey's employment as a retail liquor salesman typifies the broad areas of government employment to which the proscription of mere union membership cannot constitutionally extend. This is not the first time this term, nor will it be the last, that legislation of broad application is constitutionally defective in an area where a narrowly drawn statute might conceivably be upheld.

Butler v. *Michigan*, 352 U. S. 380, 383 (1957).

Cf. *Wieman* v. *Updegraff*, 344 U. S. 183, 190 (1952).

Joseph Burstyn, Inc. v. *Wilson*, 343 U. S. 495, 504-6 (1952).

Defendants' Brief 21 again discloses a willful confusion between the premise that a man has no constitutional right to government employment and the attempted conclusion that a government employee has no constitutional rights. It is no answer for defendants to characterize plaintiff Union as a "master" which plaintiff Habshey cannot "serve" without violating his "undivided allegiance" to the state. Such concept of "undivided allegiance" would likewise preclude mere membership in an established church (certainly "an organization distinct from the State of Alabama and national in its scope," Def. Br. 21)—and such concept of "undivided allegiance," applied to preclude such church membership or membership in plaintiff Union, violates the due process requirements recognized in *United Public Workers* v. *Mitchell*, 330 U. S. 75, 100 (1947), and repeated in *Wieman* v. *Updegraff*, 344 U. S. 183, 191-92 (1952). There is indeed a real distinction between private employment and public employment, but it is not the distinction that defendants assert; rather the distinction is that action by the public employer is State action which is subject to the commands of the Fourteenth Amendment.

III. THE SOLOMON ACT AND THE EXCLUSIONS THEREFROM VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

On the issue of equal protection, we submit that nothing need be added to the discussion at our original Brief 22-23. We do not dispute the platitudes asserted by defendants that the legislature may "recognize degrees of harm" and establish "reasonable classifications." Those platitudes, however, have no application to the completely arbitrary classification and exclusions attempted by the Solomon Act. No statute which "recognizes degrees" of a

wholly non-existent harm can satisfy the Fourteenth Amendment.

Thus the question posed by our original Brief 23 remains unanswered: What is the "evil" inherent in Union membership for state employees that does not likewise taint such membership among teachers, among city employees (including policemen and firemen), among county employees, or among State Docks Board employees? The record shows that substantially all of the last mentioned group are members of, and are represented by, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen; and the state has actually negotiated schedules of wages and rules with those unions governing the employment of their members since 1936 (Pl. Ex. 12; App. A. to this Brief).* Yet according to defendants the mere membership of state-employed liquor salesmen in plaintiff Union, without any attempted negotiation of wages or working conditions, gives rise to the spectre of "divided allegiance." Such patent and arbitrary discrimination cannot withstand the constitutional requirement of equal protection.

IV. BOTH PLAINTIFF UNION AND PLAINTIFF HABSHEY CLEARLY HAVE STANDING TO MAINTAIN THIS ACTION.

Defendants conclude their Brief by pointing out two elements which they apparently regard as affecting plaintiffs' rights to maintain this action (Def. Br. 24-25). Neither point has any more substance than their arguments on the merits.

First, as to plaintiff Habshey, defendants and their at-

* Although plaintiffs designated Pl. Ex. 12 as part of the record to be printed in this Court, it was inadvertently omitted from the printed Transcript of Record. We have reprinted it as Appendix A to this Brief.

torneys assured the District Court that the Solomon Act would not be applied to forfeit any of his rights pending the Court's final decision (R. 36). Plaintiff Union's complaint for declaratory judgment in the Alabama state courts was brought on behalf of itself and its members (R. 77-78), and the construction of the Solomon Act by the Alabama Supreme Court is binding on plaintiff Habshey. It would be a solecism to consider that plaintiff Habshey lacks standing where a reasonable time has been devoted by plaintiff Union to securing a construction of the Act fully binding on both plaintiffs. Of course, the District Court did not so hold, but ruled on the merits as to both plaintiffs.

Second, as to plaintiff Union, defendants cite and quote from *Hague* v. *C. I. O.*, 307 U. S. 496, 514, 527 (1939). Of course, this Court's decision in *Hague* that an unincorporated association is not a "citizen of the United States" entitled to maintain a suit under the Civil Rights Act for deprivation of privileges and immunities is wholly inapposite here. Plaintiff Union may not be a "citizen", but it is most certainly a "person" for purposes of enforcing the due process and equal protection rights of itself and its members under the Fourteenth Amendment.

Joint Anti-Fascist Refugee Committee v. *McGrath*, 341 U. S. 123, 140-41, 143, 159, 186-87, 198-202 (1951).

American Communications Association, C. I. O. v. *Douds*, 339 U. S. 382 (1950).

CONCLUSION.

Nothing in Defendants' Brief, either substantive or procedural, in any way modifies our position that the District Court's judgment should be reversed and the enforcement of the Solomon Act should be enjoined.

Respectfully submitted,

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APPENDIX A.

Plaintiff's Exhibit 12.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Alabama,
Southern Division.

Government & Civic Employees Organizing Committee, CIO, an unincorporated association, et al., *Plaintiffs,*
vs.
S. F. Windsor, et al., *Defendants.*
} Civil Action No. 7466.

AFFIDAVIT.

STATE OF ALABAMA, JEFFERSON COUNTY. } ss.

The undersigned, being first duly sworn, deposes and says: Affiant is reliably informed, and upon such information affirms that substantially all employees of the Terminal Railroad operated by the Alabama State Docks Board (sometimes referred to as State Docks Commission) an agency of the State of Alabama, are members of and are represented by the Brotherhood of Locomotive Firemen & Enginemen and the Brotherhood of Railroad Trainmen (labor organizations comprised of and representing employees who work on railroads). Since about 1936, these labor organizations have negotiated schedules of wages and rules governing employees. Such schedules, negotiated

with the above State Agency, are presently in effect. Such employees are referred to in Title 38, Article 17, 1940 Code of Alabama.

Affiant further deposes and says: There are municipal and county employees in Alabama who are now members of labor organizations that negotiate their wages, hours, and working conditions.

Your affiant is a Representative of the Government & Civic Employees Organizing Committee.

/s/ MAURICE R. ALLEN.

Sworn to and subscribed before me this 7th day of February, 1956.

/s/ HUGO L. BLACK, JR.,
Notary Public.

(SEAL)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

NO. 423

Government and Civic Employees Organizing Committee, CIO, an Unincorporated Association; E. J. Habshey,
Appellants

VS.

S. F. Windsor, Harrell Hammonds, Knox McRae, Clarence V. Evans, and Melvin Dawkins,
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

MOTION TO DISMISS OR AFFIRM

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the final judgment and decree of the District Court be affirmed or that the appeal be dismissed on the ground that the questions presented are so unsubstantial as not to warrant further argument.

ARGUMENT

The facts are stated in the opinions of the District

Court and the Supreme Court of Alabama, which are appended to appellants' statement as to jurisdiction, and need not be repeated here.

Act No. 720, General Acts of Alabama, 1953, page 974, commonly called the Solomon Bill, set forth as Appendix E to appellants' Jurisdictional Statement, provides that any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of the act, shall forfeit all rights afforded him under the State Merit System, employment rights, reemployment rights, and other rights, benefits or privileges which he enjoys as a result of his public employment.

The act defines a "labor union or labor organization" as being any organization of any knid, in which employees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

In short, the act prohibits a state employee from being a member of or participating in such an organization for the purpose of collective bargaining with the state.

It is here pointed out with emphasis that appellant union is not a mere discussion group as claimed by it. The Supreme Court of Alabama in the opinion reported in 262 Ala. 785, 78 So. 2d 646, specifically found otherwise.

In addition to other reasons given in the Court's opinion, it pointed out that the evidence showed that after the passage of Act No. 720, supra, a representative of appellant union testified, "I went there with a group of employees before the Personnel Board after that, and we did settle quite a few grievances which they had."

The State of Alabama has not attempted to bar its employees from membership in a discussion group as contended by appellant. The whole purpose of the act is to bar membership in a union organized and existing for collective bargaining purposes. This the State can do without offending any provisions of the Constitution, State or Federal.

After pointing out that appellant union exists for the very purpose of collective bargaining, the Court said in 262 Ala. supra:

> "We think it entirely clear that the provisions of the Solomon Bill have application to a local union sponsored and operated according to the terms and provisions of the rules of the Committee and the Constitution of the Organization. Public employees, as defined in the Solomon Bill, who become members of such an operated local union are subject to the penalties therein provided. We do not understand appellant to contend to the contrary."

In the opinion of the District Court, reported in 116 F. Supp. 354, the Court said:

> "As to employees working for the state, there can hardly be any dispute that the settlement of griev-

ances, labor disputes, wages, rates of pay, hours of employment and conditions of work are matters for the state government to be performed through its legislative and executive departments, and are not matters for collective bargaining to be participated in by a labor union or labor organization. Section 1 of the act defines 'labor union or labor organization' and as so defined, the act could well be construed by the state courts simply as prohibiting a public employee from being a member of or participating in such an organization for the purpose of collective bargaining with the state, and, as so construed, meet the challenge of unconstitutionality." The Supreme Court affirmed 347 U.S. 901.

The chief reasons denying the right of public employees to engage in union activities must be kept clearly in mind. They are stated in 31 A. L. R. 2d 1152, to be as follows:

"Chief among the reasons advanced by the courts in denying the right of public employees to engage in union activities are the sovereignty of the public employer; the fact that the government is established by and run for all of the people and not for the benefit of any person or group; that the profit system is missing in public employment; that public employees owe undivided allegiance to the public employer; and that the continued operation of public employment is indispensable in the public interest."

The following additional authorities show that Act No. 720, supra, is constitutional and valid. *Hickman v. City of Mobile*, 256 Ala. 141, 53 So. 2d 752; *Barton v. City of Bessemer*, 234 Ala. 20, 173 So. 626; *King v.*

Priest, 357 Mo. 68, 206 S. W. 2d 547, appeal dism., 333 U. S. 852, 68 S. Ct. 736, 92 L. Ed. 1133, rehearing den. 333 U. S. 878, 68 S. Ct. 901, 92 L. Ed. 1154; *City of Jackson v. McLeod*, 199 Miss. 676, 24 So. 2d 319, (certiorari denied 328 U. S. 863, 66 S. Ct. 1368, 90 L. Ed. 1633); *Fraternal Order of Police v. Lansing*, 306 Mich. 68, 10 N. W. 2d 310, (certiorari denied 321 U. S. 784, 64 S. Ct. 781, 88 L. Ed. 1076); *Miami Local Water Works v. City of Miami*, 157 Fla. 445, 26 So. 2d 194, 165 A. L. R. 967; *Coane v. Geary*, 298 Ill. App. 199, 18 N. E. 2d 719; *Hutchinson v. Magee*, 278 Pa. 119, 122 A. 234; *Carter v. Thompson*, 164 Va. 312, 180 S. E. 410; *McNatt v. Lawther*, Tex. Civ. App., 223 S. W. 506; *San Antonio Fire Fighters Local v. Bell*, Tex. Civ. App. 223 S. W. 506; *C. I. O. v. Dallas*, Tex. Civ. App., 198 S. W. 2d 143.

See also articles in 45 Ill. Law Rev. 364; 54 Harv. Law Rev. 1360; 47 Yale L. J. 1109; Rhyne, "Labor Unions and Municipal Employee Law," 1946; 31 A. L. R. 2d 1143-1180.

There is no unconstitutional discrimination in the act. The classification and exceptions are entirely reasonable and are matters within the discretion of the Legislature. The state has the right to make the act apply to immediate state agencies, and to exclude teachers and cities and counties. *Day-Brite Lighting, Inc. v. Missouri*, 342 U. S. 421.

The exception of the act's application to employees of the State Docks Board who are subject to the Railway Labor Act is fully sustained by *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450, 471-472, where it is said:

"The contention that the act denies equal protection because its provisions, or some of them, have not been extended to business corporations or associations or to labor organizations which are subject to the Railway Labor Act, 45 USCA §§151 et seq, 10A FCA title 45, §§151 et seq, is without substance. The Constitution does not oblige a state to regulate or reform all types of associations and organizations, or none. It may begin with such as in its judgment most need regulation."

The judgment of the District Court is founded on such a solid and definite line of judicial precedent that no substantial question is presented by this appeal entitling appellants to invoke jurisdiction of the Supreme Court of the United States.

It is emphasized again that the Circuit Court of Montgomery County, Alabama, and the Supreme Court of Alabama, have found as a fact that appellant union exists and its members who are employees of the State participate therein for the purpose of collective bargaining with the State: this despite appellant's contention to the contrary.

As hereinabove pointed out, the reasonable conclusion from reading the decision of the Supreme Court of Alabama is that in the Court's opinion the act was passed to prohibit a State employee from membership in a union for the purpose of collective bargaining with the State. Courts must construe acts so as to render them constitutional, if possible, and not unconstitutional.

The appellants must come within the act in order to raise constitutional questions as to its validity, for

only those to whom a statute applies and who are adversely affected by it can draw in question its constitutionality. *Red River Valley National Bank v. Craig*, 181 U. S. 548; *Ala. State Fed. of Labor v. McAdory*, supra.

If appellant union exists and appellant Habshey participates therein purely for discussion purposes as claimed by them, then they would have no right to raise the constitutional questions attempted to be raised in this case.

WHEREFORE, appellees respectfully move that the within appeal be dismissed or that the judgment and decree of the District Court be affirmed.

Respectfully submitted,

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Assistant Attorney General

WILLIAM N. McQUEEN
Assistant Attorney General
Counsel for Appellees

I, William N. McQueen, one of the attorneys for appellees, S. F. Windsor, Harrell Hammonds, Knox McRae, Clarence V. Evans, and Melvin Dawkins, appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the .....day of September, 1956, I served copies of the foregoing statement opposing jurisdiction and mo-

tion to dismiss or affirm on the several appellants thereto by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record as follows:

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IN THE

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No. 423

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING Committee, CIO, an Unincorporated Association; E. J. HABSHEY, *Appellants,*

vs.

S. F. WINDSOR, FELIX L. PARSONS, HARRELL HAMMONDS, KNOX McRAE, CLARENCE V. EVANS, and MELVIN DAWKINS, *Appellees.*

Appeal from the United States District Court for the Northern District of Alabama, Southern Division.

BRIEF ON BEHALF OF APPELLEES

* * *

STATEMENT OF THE CASE

On October 7, 1953, appellants sought an injunction and declaratory judgment against enforcement of Act No. 720, General and Local Acts of Alabama 1953, page 974, known as the "Solomon Act." It was alleged that the act violated the Fourteenth Amendment of the Constitution of the United States. The Solomon Act became effective September 17, 1953, and provides as follows:

"AN ACT

"To provide that any public employee who joins or participates in a labor union or labor organization shall forfeit all rights afforded him

under the State Merit System, employment rights, re-employment rights, and all other rights, benefits, or privileges which he enjoys as a result of his public employment.

"Be it Enacted by the Legislature of Alabama:

"Section 1. As used in this act the term 'labor union or labor organization' means any organization of any kind, in which employees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and the term 'public employee' means any person whose compensation is derived in whole or in part from the State, or any agency, board, bureau, commission or institution thereof.

"Section 2. Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment.

"Section 3. This act shall not apply to persons employed as teachers by any county or city board of education or trade schools or institutions of higher learning, nor shall it apply to those employees of the State Docks Board referred to in Title 38, Section 17 of the Code of

Alabama, 1940, nor shall it apply to employees of cities or counties.

"Section 4. Any public employee who prior to the passage of this act or to his public employment belonged to a labor union or labor organization and as a result thereof has acquired insurance benefits or any other financial benefits may continue to participate in such labor union or labor organization to the extent that he shall not lose any benefits thus acquired.

"Section 5. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not effect the part which remains.

"Section 6. All laws or parts of laws which conflict with this act are repealed.

"Section 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

"Approved September 17, 1953.

Time 3:39 P.M."

On October 15, 1953, appellees filed their motion to dismiss and without waiving same also filed their answer.

Thereafter, on October 27, 1953, the cause was heard by a three judge court and on November 9, 1953, final relief was denied, but the cause was retained for a reasonable time to permit exhaustion of such state administrative and judicial remedies as may be available. In its opinion, the court stated:

> "The Solomon Bill concerns an important area of State administration and proclaims a broad legislative policy as to such administration. As to employees working for the State, there can hardly be any dispute that the settlement of grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work are matters for the State government to be performed through its legislative and executive departments, and are not matters for collective bargaining to be participated in by a labor union or labor organization. Section 1 of the act defines 'labor union or labor organization,' and, as so defined, the Act could well be construed by the state courts simply as prohibiting a public employee from being a member of or participating in such an organization for the purpose of collective bargaining with the State, and, as so construed, meet the challenge of unconstitutionality." 116 F. Supp. 354.

The three judge district court therefore applied the doctrine of abstention. On appeal, the judgment of the district court was affirmed by this court. See 347 U. S. 901.

Alone and without appellant Habshey, the appellant union thereafter filed a bill in the Circuit Court of Montgomery County, Alabama, in Equity, in which it sought to have the court declare and decree that it was not a labor union or labor organization within the meaning of the Solomon Act. (Rec. p. 72)

After a hearing on the merits, the Circuit Court, on April 12, 1954, declared and decreed that the

Solomon Act applied to complainant, its activities and its members. (Rec. p. 144) An appeal from the judgment was taken to the Supreme Court of Alabama, and, on March 10, 1956, said Supreme Court affirmed the judgment of the lower court. See 262 Ala. 285, 78 So. 2d 646. (Rec. p. 57)

The appellants, both of them, then moved the district court to proceed to dispose of the litigation in that court on its merits, and to decide the constitutional questions raised by the bill of complaint, said motion reciting that the Supreme Court of Alabama had construed the Solomon Act as applying to appellant union. (Rec. p. 56)

After a hearing in the district court in which the entire record before the Supreme Court of Alabama, upon which it based its decision, was introduced in evidence, the district court, in a per curiam opinion said:

> "As indicated, we have heretofore decided that the Solomon Bill can be so construed as to meet the challenge of unconstitutionality, and our said decision has been affirmed by the Supreme Court of the United States. **After a thorough reading and consideration of the final decree of the Circuit Court of Montgomery County in Equity and of the opinion of the Supreme Court of Alabama heretofore mentioned, it is clear to us that the Alabama Courts have not construed the Solomon Bill in such a manner as to render it unconstitutional, and, of course, we cannot assume that the state courts will ever so construe said statute.**" (Rec. p. 67, 68; emphasis supplied) 146 F. Supp. 214.

The cause was then dismissed with prejudice. (Rec. p. 68, 69) It is from this judgment of dismissal that the present appeal is being taken.

It is to be noted at this point that appellant union did not file an application for rehearing before the Supreme Court of Alabama, nor did it seek to have said court's judgment reversed by the Supreme Court of the United States.

STATEMENT OF CLAIMS AND CONTENTIONS

Appellant union is a labor union, and an unincorporated association, having its principal office in Washington, D. C. It is an affiliate of the Congress of Industrial Organizations and is engaged in organizing and recruiting members among, and the representation of civilian employees employed by public bodies and by social agencies, public or private. (Rec. p. 2)

Appellant Habshey is a clerk in a retail liquor store operated by the Alabama Alcoholic Beverage Control Board. (Rec. p. 10)

The appellee, Windsor, is District Store Supervisor for the Alabama Alcoholic Beverage Control Board charged with the general supervision of the liquor store, among others, in which appellant Habshey is employed. (Rec. p. 10, 29) Appellee, Felix L. Parsons, is manager at the store in which Habshey works. (Rec. p. 10)

The other appellees are the administrator and members of the Alabama Alcoholic Beverage Control Board. (Rec. p. 64)

Appellants claim that as a result of the passage of the Solomon Act and the Board's threat to enforce same, some two hundred and fifty (250) members of the union, who paid two dollars per month dues, withdrew from the union. (Rec. p. 92) Appellant Habshey did not withdraw and he, and one other possibly, are now the only employees of the A.B.C. Board who are still members of appellant union. (Rec. p. 100)

Appellants claim further that the union attempted to bargain collectively with the A.B.C. Board prior to the passage of the Solomon Act but were refused, the A.B.C. Board stating that they couldn't engage in bargaining with the union (Rec. p. 88); that thereafter they did not assert the right to strike against the Board and adopted the Board's decision not to bargain and ceased attempts to bargain collectively with the Board; that the union became more or less a discussion group, discussing public issues of the day, political issues, Federal Social Security or Public Housing Acts, and the benefits under those acts. They discussed anything having to do with the well being of people, anything which was economical, political or otherwise. (Rec. p. 88, 89)

Appellees claim that the rules of the appellant union and the Constitution of Congress of Industrial Organizations, together with the statement of President Philip Murray, in establishing appellant committee show beyond question that appellant union exists for the very purpose of collective bargaining (Rec. p. 101, 112, 118); that each member of the union takes an oath to observe the rules of appellant committee (Rec. p. 87); that recourse, under its rules, to any other action except settlement of dis-

putes by negotiations, conciliation, mediation and arbitration shall be taken only with written approval of the Executive Officers of GCEOC (Rec. p. 112, 124); that no written approval of the executive officers to do otherwise was ever obtained by appellant union, and the union and its members are duty bound by oath and the said constitution and rules to bargain collectively with their employer.

Appellees claim further that the testimony of James W. Battles, the only witness used by appellant union in the Montgomery County Circuit Court, tends to show that the union has not become a mere discussion group as claimed; that the activity of the union and its members shows that the members of appellant union were not giving their undivided allegiance to the State of Alabama.

Appellants contend that the Montgomery County Circuit Court and the Supreme Court of Alabama both held that the Solomon Act applies to a union whose members have agreed not to strike and not to bargain collectively with the State of Alabama. and who have in reality become a discussion group. Hence, they contend that the Solomon Act so construed violates the Fourteenth Amendment of the Constitution of the United States.

Appellees contend that the Montgomery County Circuit Court and the Supreme Court of Alabama both found that appellant union and its members had not become merely a discussion group, but under its rules and the constitution of CIO, and the testimony of James W. Battles, the union exists and its members participate therein for the purpose of collective bargaining with the State. Hence, there is

no constitutional objection in applying the Solomon Act to appellants under the ruling of the district court, which was affirmed by this Court in 347 U. S. 901.

Appellees contend further that neither the District Court nor the Circuit Court of Montgomery County nor the Supreme Court of Alabama has ever construed the Solomon Act as applying to a so called discussion group.

QUESTIONS PRESENTED

1. There is no constitutional question presented by this appeal which has not already been decided by the Supreme Court of the United States in affirming the judgment of the district court in this very case.

2. Was the district court correct in dismissing the action?

ARGUMENT

I

The district court decided that the Solomon Act can be so construed as to meet the challenge of unconstitutionality. It applied the doctrine of abstention for a reasonable time to permit a construction of the act by the state courts. The Supreme Court of the United States affirmed the district court. 347 U. S. 901.

The district court pointed out, in its opinion, that the state courts could well construe the Solomon Act

as simply prohibiting a public employee from being a member of or participating in an organization for the purpose of collective bargaining with the state. If so construed, under the law of this case as already decided, the act is constitutional. Any other construction of that which has been decided to date by the district court and the Supreme Court of the United States would render futile and meaningless the actions of those courts.

If the Solomon Act is applied to a union whose members participate therein for the purpose of collective bargaining with the state such application is constitutional. The Supreme Court of Alabama stated the matter as follows:

> "We think it entirely clear that the provisions of the Solomon Bill have application to a local union sponsored and operated according to the terms and provisions of the rules of the Committee and the Constitution of the Organization. Public employees, as defined in the Solomon Bill, who become members of such an operated local union are subject to the penalties therein provided." 262 Ala. 285, 78 So. 2d 646.

In establishing appellant union, Philip Murray wrote:

> "This committee is authorized and directed to proceed with the organization of employees in federal, state, county, municipal and related governmental agencies. The committee shall undertake to represent and defend the interests of these employees in the **realm of collective bargaining** and legislative matters in such man-

ner as to afford them the protection and improvement to which they are entitled." (Emphasis supplied; Rec. p. 101)

The rules of the Committee provide:

"Collective Bargaining

"Section 1. The policy of GCEOC shall be to resolve any dispute between employees and employers by **negotiations,** conciliation, meditation or arbitration. **Recourse to any other action shall be taken only with written approval of the Executive Officers of GCEOC."** Emphasis supplied; Rec. p. 112, 113)

The Constitution of Congress of Industrial Organizations provides, under the heading "Objects," the following:

"Second. **To extend the benefits of collective bargaining** and to secure for the workers means to establish peaceful relations with their employers, by forming labor unions capable of dealing with modern aggregates of industry and finance." (Emphasis supplied; Rec. p. 118)

The Constitution of CIO also provides:

"The Executive Board shall have the power to investigate any situation involving an affiliate on the ground that such affiliate is conducting its affairs and activities contrary to the provisions of the Constitution, and to make recommendations to the affiliate involved and to make a report to the convention." (Rec. p. 124)

The Bill of Complaint filed by appellant union in the Montgomery County Circuit Court alleges:

> "Complainant exists and its members participate in complainant for the purpose, among other things, **of dealing with such employers** concerning grievances, labor disputes, wages, rates of pay, hours of employment, conditions of work, and other related matters in order to improve, **by negotiation,** the conditions of employment for and the quality of service rendered by such employers as to affect such improvement by legislation, or other legitimate means." (Emphasis supplied; Rec. p. 73, 98)

To the question to the witness Battles, "That is true, is it not?" he replied, "Yes, sir." (Rec. p. 98)

The witness James W. Battles identified himself as being the National Representative of the CIO attached to the Government and Civic Employees Organizing Committee. (Rec. p. 87) Also, that he was a staff representative assigned to the union. (Rec. p. 96)

The witness Battles also testified as follows:

> "Q. One of the main purposes of your local union is to bargain collectively with employers; isn't that one of the main purposes?
>
> "A. I would say that is one of the purposes, yes sir.
>
> "Q. In other words, you believe in united

strength, where a large number of you get together you can bring about better working conditions, and better working hours and rates of pay, where you collectively go to an employer and bargain with him?"

"A. Yes sir.

"Q. And you do use in instances where you feel justified a strike to bring about the enforcement of what you think is a legitimate request?

"A. Yes, sir.

"Q. And your organization has done that, hasn't it?

"A. Yes sir.

"Q. And I believe you stated that before the passage of the Solomon Act you did attempt, or your members did attempt, or your officers, or who had this bargaining duty, did attempt to bring about collective bargaining with the Alcoholic Beverage Control Board, or its administrators?

"A. Yes, sir.

"Q. Were you told at that time by Mr. McRae, or Mr. Thames, that it was the policy of the State it could not bargain collectively?

"A. Yes, sir, told by Mr. McRae.

"Q. You did attempt collective bargaining with them?

"A. Yes, sir.

"Q. And they took the position they couldn't do that?

"A. Yes, sir.

"Q. After the passage of the Solomon Act did you attempt to bargain collectively with them in any way?

"A. Only to the extent we asked them if the act applied to us." (Rec. p. 97, 98)

It was the above line of evidence which brought about the following from the Supreme Court of Alabama: (262 Ala. 285; 78 So. 2d 646)

> "The constitution, rules and by-laws of a labor union or labor organization are the source of its authority. They constitute the contract between the labor union and its members, as well as the contract between members of the union. **Alabama State Federation of Labor v. McAdory,** 246 Ala. 1, 18 So. 2d 810. The statement of Battles to the effect that 'we' abandoned the usual procedures pursued by labor organizations to accomplish their purposes is in irreconcilable conflict with the declared purpose and object of the organization and of the committee. The record before us fails to show any authority whatsoever whereby a local union on its own volition or upon the mere advice of a representative of the organization may abandon the declared purposes and objects of the parent organization. Such attempt to change the pur-

pose of the local union appears to be subversive and prohibited by the constitution and laws of the national organization. **Congress of Industrial Organizations v. City of Dallas,** Tex. Civ. App., 198 S. W. 2d 143; **Perez v. Board of Police Com'rs. of City of Los Angeles,** 78 Cal. App. 2d 638, 178 P. 2d 537."

This is but saying that the union exists and the members participate therein for the purposes for which the union was organized; that one of its main purposes is collective bargaining; that collective bargaining is constitutionally prohibited by the Solomon Act.

What else could have led to the district court's opinion that, "It is clear to us that the Alabama Courts have not construed the Solomon Bill in such manner as to render it unconstitutional, and, of course, we cannot assume that the state courts will ever so construe said statute." Rec. p. 67, 68)

So we say there is no constitutional question presented in this case, for the district court has already decided that the Solomon Act, if construed to prohibit collective bargaining with the State, is constitutional, and, this decision has been affirmed by this Court.

Moreover, there are parts of Battles' testimony which do not support his statement to the effect that after the board refused to negotiate, the Alabama local union became a mere discussion group.

The following transpired during the examination of Battles:

"Q. You said when you couldn't get collective bargaining you resorted to other means that were legitimate. What do you mean by resorting to other means legitimate, **toward having the wages raised?**

"A. I see what you mean, I went there with a group of employees before the Personnel Board after that, and we did settle quite a few grievances which they had." (Emphasis supplied, Rec. p. 90)

Then there is the testimony of Battles on direct examination that the union "is not anyway in the world a labor organization within the meaning of the Bill, and the law does not apply to us." But on cross-examination, he testified that when the Solomon Bill was introduced in the Legislature he thought it might be applicable to the employee members of the union and contacted legislators and other unions in an effort to defeat the Bill. (Rec. p. 93, 96, 97)

And then again Battles testified that they did discuss a bill they were contemplating sponsoring in the Legislature to provide for collective bargaining for state employees. (Rec. p. 91)

House Joint Resolution No. 638, General Acts of Alabama 1939, page 1004, which is still in effect, declared the public policy of the State of Alabama with reference to state employees joining unions. This resolution stated that, ". . . the effort to organize state employees . . . is viewed with grave concern and disfavor by this Legislature . . . ,"

The above testimony of Battles not only tends to

show that the union is not a mere discussion group as claimed, but that the union and the state employee members thereof have engaged in sponsoring collective bargaining legislation for state employees and have attempted to defeat legislation which prohibits collective bargaining. As individuals the constitutional right is there, but as state employees it is not. Such action is contrary to the declared public policy of the State of Alabama.

II

THE SOLOMON ACT IS CONSTITUTIONAL

The conditioning of public employment upon nonmembership in labor unions has been frequently upheld by the courts. Most of the decided cases involve municipal ordinances but in them, as here, the same contentions of unconstitutionality under the Fourteenth Amendment have been made and overruled. So far as the constitutional issues are concerned, there would seem to be no difference whether the legislation in question is a State statute or a municipal ordinance.

The courts have advanced several reasons in denying the right of public employees to engage in union activities. The public employer is a sovereign; the government is established by and run for all of the people and not for the benefit of any person or group; the profit system is missing in public employment; public employees owe undivided allegiance to public employer; continuing operation of public employment is indispensable in the public interest. (A thorough annotation of this subject appears in 31 A. L. R. 2d 1142-1180.)

The Supreme Court of Alabama has written to this question in the case of **Hickman v. City of Mobile,** 256 Ala. 141, 53 So. 2d 752. The justices were agreed in spite of contentions that appellants were being deprived of constitutional rights, that it lay within the power of a municipality to prohibit membership of policemen and firemen in labor unions. The Court stated:

> " . . . under such charter provisions such governing boards may refuse employment and prohibit the service of any one or all such employees who are members of labor organizations, which are not only national but international in scope and purpose and therefore their organization being opposed to and the direct antithesis of the basic purposes of local self government for which cities and towns in Alabama are established. This power is essential to the preservation of the character and life of such municipalities." (Numerous leading cases are cited in the opinion to sustain the above holding.)

It is the almost unanimous determination by all courts which have passed on the question that public workers are in a class apart from workers in private industry and may be fobidden, upon penalty of dismissal, from participating in labor unions.

In the case of **C. I. O. v. Dallas,** 198 S.W. 2d 143 (Tex. Civ. App.), the Texas Court upheld an ordinance prohibiting, upon penalty of dismissal, **all** city employees from organizing or becoming members of labor unions. The same constitutional objections suggested in this case were there p r e s e n t e d.

The court held that the rights and privileges granted by the Federal Constitution were personal and could be waived and that by accepting employment with the city, the appellants did waive them to the extent that they were inconsistent with their duties as city employees.

This same principle has been enunciated in many other cases. An analogous situation is that of statutory restrictions upon the political activities of public employees. Here also such restrictions have been upheld in the face of attack on constitutional grounds as interference with freedom of speech or personal liberty. **McAuliffe v. Mayor of New Bedford**, 155 Mass. 216, 29 N.E. 517; **United Public Workers v. Mitchell**, 330 U.S. 75.

Analogous also is the case of **Alder v. Board of Education of New York**, 342 U.S. 485, involving the constitutionality of the Feinberg Law, a New York statute providing for the disqualification and removal of teachers and employees in the public schools who advocate the overthrow of the Government by unlawful means or who are members of organizations which have a like purpose. In upholding the Act, the court stated:

> "It is clear that such persons have the right under our law to assemble, speak, think and believe as they will. **Communications Assn. v. Douds**, 339 U.S. 382. It is equally clear that they have no right to work for the state in the school system on their own terms. **United Public Workers v. Mitchell**, 330 U.S. 75. They may work for the school system upon the reasonable terms laid down by the proper authorities of New

> York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere. Has the State thus deprived them of any right to free speech? We think not. . . ."

The controlling principle in all of these cases is that public employment necessitates a surrender of certain civil rights to a limited extent because of a dominant public interest in the unimpeded functions of government.

This was expressed aptly by Murray, J., in **Railway Mail Ass'n. v. Murphy**, 180 Misc. 868, 44 N.Y.S. 2d 601:

> "To tolerate or recognize any combination of civil service employees of the Government as a labor organization or union is not only incompatible with the spirit of democracy, but inconsistent with every principle upon which our Government is founded. Nothing is more dangerous to public welfare than to admit that hired servants of the state can dictate to the Government the hours, the wages and conditions under which they will carry on the essential services vital to the welfare, safety and security of the citizens. To admit as true that Government employees have power to halt or check the functions of Government, unless their demands are satisfied, is to transfer to them all legislative, executive and judicial power. Nothing would be more ridiculous.

Appellants seek to draw a distinction between the cases involving firemen and policemen and the

case here involving a state employee in a state operated liquor store. This argument stems from **Carter v. Thompson**, 164 Va. 312, 180 S.E. 410, 412, where it is said that police and fire departments are in a class apart. We might ask, what about employees working for the State Insane Hospitals?

There may be a difference in degree between certain types of employment, but all owe undivided allegiance to the State when employed by it, and so long as human nature is what it is, a man cannot serve two masters. Here the appellant Habshey has, by his oath, given his allegiance to and subjected himself to the control of appellart union, an organization distinct from the State of Alabama and national in its scope.

The real distinction is that which exists between private employment and public employment, not in the fact that one is a policeman or a fireman.

There have been at least four cases which have reached the Supreme Court of the United States under similar factual situations with the exception that they involved firemen and policemen. In each case there was alleged a violation of the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the Constitution, and none of said cases discloses a violation of any constitutional rights.

The most important, which is adverse to appellants, is **King v. Priest**, 357 Mo. 68, 206 S.W. (2d) 547, appeal dismissed 333 U.S. 852, rehearing denied 333 U.S. 878. In the **Priest case**, the union claimed to be a non-striking union and agreed that

collective bargaining was not a proper union practice with regard to public employees. Every constitutional question attempted to be raised in this case was raised in that case. This Court dismissed an appeal from the Supreme Court of Missouri stating, "The appeal is dismissed for want of a substantial Federal question."

The other cases are, **State Lodge of Michigan, Fraternal Order of Police v. City of Detroit,** 318 Mich 182. 27 N.W. (2d) 612, certiorari denied, 332 U.S. 818; **City of Jackson v. McLeod,** 199 Miss. 676, 24 So. (2d) 319, certiorari denied, 328 U.S. 863; **Fraternal Order of Police v. Harris,** 306 Mich. 68, 10 N.W. (2d) 310, certiorari denied, 321 U.S. 784.

THE SOLOMON ACT MAKES NO UNLAWFUL DISCRIMINATION.

The Solomon Act does not unconstitutionally discriminate against appellants or either of them. If it did the district court would have so declared. Instead, the court found that the State Courts could well construe the act in such a manner as to meet the constitutional objections raised and then applied the doctrine of abstention. If this had not been correct, this Court would not have affirmed the district court.

There is nothing in the provisions of the Fourteenth Amendment to prevent the states from reasonable classification of subjects for legislative action. **Farmers Irrig. Dist. v. Nebraska ex rel. O'Shea,** 244 U.S. 325.

The Legislature is not bound in order to support

the constitution or validity of its regulation to extend it to all cases to which it might possibly reach but, dealing with practical exigences it may be guided by experience and is free to recognize degrees of harm and confine its restrictions to those classes of cases where the need is deemed to be the clearest. **Miller v. Wilson**, 236 U.S. 373; **Williamson v. Lee Optical of Oklahoma, Inc.**, 348 U.S. 483.

It seems to us that the act exempts three categories of public employees from its provisions—teachers, certain railway employees of the State Docks Board (referred to in Title 38, Section 17, Code of Alabama 1940), cities and counties.

This classification and exception are entirely reasonable and are matters within the discretion of the Legislature. **Day-Brite Lighting, Inc. v. Missouri**, 342 U.S. 421.

The exception of the act's application to employees of the State Docks Board, who are subject to the Railway Labor Act, is fully sustained by **Alabama State Federation of Labor v. McAdory**, 325 U.S. 471; 246 Ala. 1, 18 So. 2d 810.

In the **McAdory case**, the Supreme Court of Alabama said:

> "Argument is advanced also that the Act is invalid because of a capricious discrimination, in that it expressly excludes organizations coming within the influence of the Act of Congress known as the Railway Labor Act, as amended, 45 U.S.C.A. §§ 151-188. But a study of that Act, to which we gave attention in **Steele v. L.**

> **& N. R. Co.**, 16 So. 2d 416, will disclose that it was the intent of Congress, in large part if not entirely, to pre-empt the field covered by the salient features of the statute."

It therefore clearly appears not only from what has already been decided in this case by the district court and affirmed by this Court, but by the cases hereinabove cited, that the Solomon Act does not unlawfully discriminate against appellants.

CONCLUSION

Finally, we desire to point out that the district court on November 9, 1953, retained this cause for a reasonable time to permit appellants to exhaust such state administrative and judicial remedies as may be available. The appellant Habshey has never pursued his remedy in the State Courts and has sought no construction of the Solomon Act in said courts. Over two years is more than a reasonable time within which he could have done so. He, therefore, cannot complain of the court's action in dismissing the case on February 17, 1956.

We desire to point out also as to appellant union that this Court has held:

> "Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for 'citizens of the United States.' Only the individual respondent may, therefore, maintain this suit." **Hague v. Committee for Industrial Organization**, 307 U.S. at page 514.

And again in said case at page 527:

"Since freedom of speech and freedom of assembly are rights secured to persons by the due process clause, all of the individual respondents are plainly authorized by § 1 of the Civil Rights Act of 1871 to maintain the present suit in equity to restrain infringement of their rights. As to the American Civil Liberties Union, which is a corporation, it cannot be said to be deprived of the civil rights of freedom of speech and of assembly, for the liberty guaranteed by the due process clause is the liberty of natural, not artificial persons."

The district court was correct in dismissing the action and its judgment should be affirmed.

Respectfully submitted,

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I, Gordon Madison, one of the attorneys for appellees, herein, hereby certify that on 8th day of April 1957, I served copies of the foregoing brief on the appellants by mailing copies in duly addressed envelopes, with first class postage prepaid, to each of their attorneys of record.

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